85-1794

No.

Supreme Court, U.S.
FILED
MAR 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

BERTIL SAGERMARK

v.

IMMIGRATION AND NATURALIZATION SERVICE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BERTIL SAGERMARK
P.O. Box 27010
Escondido, California 92027
(619) 489-5817

IN PROPRIA PERSONA

QUESTIONS PRESENTED

Violation of Petitioner's constitutional, statutory, and regulatory rights to substantive and procedural due process and a fair hearing.

1. Whether the court of appeals violated Petitioner's rights by basing its denial of recognition of refugee status upon misinterpretation, misrepresentation, and omission of central operative facts.

2. Whether the Board of Immigration Appeals denied Petitioner his rights by refusing his request for oral argument pursuant to 8 C.F.R. §3.1(e), yet addressed the merits of his claim to refugee status.

3. Whether the Immigration Judge denied Petitioner's rights by canceling a hearing after being informed that Swedish witnesses were on their way to the hearing, effectively preventing them from testifying in support of Petitioner's claim to refugee status.

4. Whether the Immigration Judge denied Petitioner his rights when burying the few exhibits which Petitioner had introduced as evidence as to his fear of persecution in Sweden under a bulk of totally irrelevant material which had been supplied by Petitioner for the Immigration Judge's personal and general information only and certainly not for the squandering of a major part of the "six-hour hearing" in the process.

5. Whether the Immigration Judge violated Petitioner's rights by pretending that he had "carefully considered all of the evidence presented" before rendering his decision while the Administrative Record clearly indicates that the Immigration Judge did not have the slightest idea as to the contents of crucial evidence introduced by Petitioner in support of his claim to refugee status.

6. Whether the Immigration Judge denied Petitioner his rights when he after having received "numerous***letters [from Petitioner] complaining about the IJ's ruling," A-3, destroyed the true transcript of his June 19, 1981 oral decision denying recogni-

tion of refugee status and withholding of deportation and produced a heavily doctored version where such grounds for denial as the admitted non-harassment, non-intimidation, and non-imprisonment of Petitioner's dying deaf-mute 92-year-old mother in Sweden "because of her son's activities in the United States" had been erased and substituted with such statements which more easily would pass a Board of Immigration Appeals review.

7. Whether the Immigration Judge denied Petitioner his rights by altering the June 19, 1981 oral decision denying recognition of refugee status with a view to incorporate, surreptitiously, posterior burden-of-proof reasoning by the United States Court of Appeals for the Second, respectively, Third Circuit—in **Stevic v. Sava**, 678 F.2d 401 (2nd Cir. 1982) and **Rejaie v. INS**, 691 F.2d 139 (3rd Cir. 1982).

8. Whether the Immigration Judge violated Petitioner's rights by using withholding-of-deportation criteria for the evaluation of Petitioner's claim to refugee status.

Denial of justice: "sham" judicial proceedings in Sweden and, in particular, violations of fundamental principles of international law by Swedish authorities.

9. Whether a "sham" conviction constitutes **persecution** in the meaning of the term as contained in the United Nations Protocol Relating to the Status of Refugees.

10. Whether an extradition attempt made without any legal grounds and in bad faith constitutes **persecution.**

11. Whether under international law Sweden can lawfully exercise criminal jurisdiction over its own nationals **within** the territorial boundaries of a sovereign State with regard to acts which in their entirety have occurred in the latter State.

12. Whether the court of appeals abdicated its constitutional responsibilities as a reviewing court when ignoring that Petitioner's conviction as being null, void, invalid, and inoperative under international law also must be regarded as null, void, invalid, and inoperative under the domestic law of the United States. **The Paquete Habana**, 175 U.S. 677 (1900).

Denial of access to the courts.

13. Whether arbitrary denial of access to the courts constitutes **persecution.**

14. Whether the use of Orwellian language by the courts when **requiring Petitioner to prove his LEGAL STANDING by means of a certificate as to his MENTAL CAPACITY issued by a psychiatrist** constitutes persecution.

Conspiracy to obstruct the administration of justice.

15. Whether a wholesale conspiracy, involving the Parliamentary Ombudsman for Justice, the Chancellor of Justice, the Supreme Prosecutor, and the Supreme Court of Sweden, to **perpetuate a major miscarriage of justice** constitutes persecution.

16. Whether the singling-out of Petitioner for unlawful application of the civil and criminal laws constitutes persecution.

17. Whether the total loss of Petitioner's residency, home, and office in Madrid, Spain and, consequently, his means of earning a livelihood as a civil engineer, as caused by the Swedish conspiracies to force him to submit to the unlawful exercise of Swedish territorial jurisdiction **within** Spain with regard to an alleged crime which had not even been committed, amounts to such deliberate imposition of substantial economic disadvantage as to equate persecution *Cf.* **Kovac v. INS,** 407 F.2d 102, 107 (9th Cir. 1969)

NOTE: Petitioner's constitutional rights to due process and a fair hearing were violated when the court of appeals summarily ruled that "Sagermark's numerous other objections [were] either frivolous or irrelevant" without in any way specifying their nature. Some of these objections which Petitioner remains unable to view otherwise than as highly pertinent in regard to the burden-of-proof-as-to-persecution issue and his contention that he was denied due process and a fair hearing on every level of the

three-step administrative proceedings (**see** REASONS FOR GRANTING THE PETITION, **INS disregard of own regulations,** page 25) are, as listed in Appendix F, A-40 to A-43, incorporated by reference in QUESTIONS PRESENTED. Each "Whether" represents, effectively, another Reason for Granting the Petition.

Petitioner is painfully aware that it must have been an uncomfortable and politically sensitive task for the court of appeals to deal with the question whether persecution by the hands of a minion judiciary, particularly the judiciary of the Ombudsman State which automatically is presumed to be democratic, humane, and law-abiding, can equate persecution effectuated through thugs acting in an official or semi-official capacity. In **Cohens v. Virginia,**19 U.S. 264, John Marshall, the fourth Chief Justice of this Court, presents his view of "the constitutional duty of the judge:"

> "The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful; with whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction than to usurp that which is not given. The one or the other would be treason to the constitution."

The regulations require that the advisory opinion rendered by the Department of State be included in the record and that the applicant for asylum be given an opportunity to inspect, explain, and rebut it. 8 C.F.R. § 103.2(b)(2), § 108.2, and § 208.10(b). *Cf.* REASONS FOR GRANTING THE PETITION, **INS disregard of own regulations,** page 25. The federal courts have repeatedly recognized that these opinions are **ex parte** declarations which are submitted without the traditional safeguards required of admissible evidence in judicial proceedings and that political considerations depending upon the relationship between the United States and the State of the applicant's nationality affect their credibility. It is indicative that the State Department **repeatedly issued the same boiler-plate opinion** in Petitioner's case while it never had access to more than a minor part of the evidence introduced in support of his claim to recognition of refugee status.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED

Violation of Petitioner's constitutional, statutory, and regulatory rights to substantive and procedural due process and a fair hearing i

Denial of justice: "sham" judicial proceedings in Sweden and, in particular, violations of fundamental principles of international law by Swedish authorities ii

Denial of access to the courts iii

Conspiracy to obstruct the administration of justice iii

TABLE OF CONTENTS v

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

JURISDICTION 3

INTERNATIONAL TREATIES, CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE PETITION

Counteracting the weakening of international law 26

Departure from the accepted and usual course of judicial proceedings calling for exercise of the Supreme Court's power of supervision 27

INS disregard of own regulations 28

CONCLUSION 29

Appendix A A-1
Opinion of the U.S. Court of Appeals for the Ninth Circuit

Appendix AA A-10
Photo of forgery, page of Swedish Supreme Court diary

Appendix B A-11
Decision and Order of the Board of Immigration Appeals

Appendix C A-13
Denial of petition for rehearing en banc

Appendix D A-14
Petition for rehearing en banc

Appendix E A-31
Extract from Administrative Record

Appendix F A-40
"Sagermark's numerous other objections [were neither] frivolous [nor] irrelevant"

TABLE OF AUTHORITIES

Cases:

Cardoza-Fonseca v. INS, 767 F.2d 1448 (9th Cir. 1985)

Hetzer v. INS, 420 F.2d 357 (9th Cir. 1970)

Kovac v. INS, 407 F.2d 102, 107 (9th Cir. 1969)

Rejaie v. INS, 691 F.2d 139 (3rd Cir. 1982)

Reyes v. INS, 673 F.2d 1087 (9th Cir. 1982)

Stevic v. Sava, 678 F.2d 401 (2nd Cir. 1982)

The Paquete Habana, 175 U.S. 677 (1900)

Miscellaneous:

United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (Geneva 1979)

International Treaties, Constitutional Provisions, Statutes, and Regulations

United Nations Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. 6577

Fifth Amendment to the United States Constitution

8 C.F.R. §3.1(e)
8 C.F.R. §103.2(b)(2)
8 C.F.R. §108.2

Justice is not associated with the courts. It is expected, instead, from the Ombudsman.

The New Totalitarians, *Exhibit 44,* A.R. 506.

IN THE

Supreme Court of the United States

October Term, 1985

No._____

BERTIL SAGERMARK,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Bertil Sagermark petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, denying him recognition of his status as a political refugee from Sweden.

OPINIONS BELOW

The opinion of the court of appeals (App. A, A-1 to A-9)[1] is reported at 767 F.2d 645.

The opinion of the Board of Immigration Appeals (App. B, A-11 to A-12) is unreported.

[1]References to "A" are to pages in the appendix to this petition, *post*.

The decision of the Immigration Judge is not attached for the reason that, contrary to the erroneous opinion of the court of appeals, it exists in two substantially and substantively differing versions. That decision (A.R. 60 to 77)[2] which was reviewed by the Board of Immigration Appeals and thereby found to be both "thorough and well-reasoned" (A.R. 2) is **not a true transcript** of the decision which was delivered orally by Immigration Judge Robert J. Barrett in San Diego, California on June 19, 1981. The original and, more importantly, **true** "typewritten copy of the [Immigration Judge's] oral decision [which pursuant to 8 C.F.R. §242.19(b) should have been] furnished" when requested by Sagermark and which, according to the official immigration court reporter, had "been transcribed separately and [was] attached" to the "Transcript of Hearing" (A.R. 326) was to be substituted by the Administrative Record version as a consequence of "numerous***letters to the IJ complaining about the IJ's ruling" which, as the court of appeals acknowledges, at A-3, had been sent by Sagermark. Sagermark had, indeed, been dumbfounded into disbelief when having had to listen to how the Immigration Judge was basing his denial of withholding of deportation on such grounds as the admitted non-harassment, non-intimidation, and non-imprisonment of Sagermark's dying deaf-mute 92-year-old mother in Sweden "because of her son's activities in the United States," and the IJ had evidently agreed by destroying the original and true transcript of his oral decision, issuing a doctored one where such embarrassing statements as would not pass a Board of Immigration Appeals review had been erased and better considered positions had been inserted, ONE year and FIVE months after the oral decision had been delivered. And first after the September 22, 1982 death in Sweden of Sagermark's then 94-year-old mother had led to the intervention of the White House and of such prominent Members of Congress as the Honorable Clement J. Zablocki and Peter W. Rodino, Jr., as Chairmen of the Committee on Foreign Affairs, respectively, Committee on the Judiciary, of the House of Representatives. A **third** transcript, which was at the same time a **second true** one, was, however, provided by Respondent, the Immigration and Naturalization Service, but not until more than TWO years and

[2] References to "A.R." are to pages in the administrative record which was filed in the court of appeals.

FIVE months had passed after the June 19, 1981 date of the oral decision and then only because Petitioner had insisted persistently thereon.

Finally, the court of appeals' denial (App. C, A-13) of the petition for rehearing and suggestion for rehearing *en banc* (petition for rehearing *in banc,* App. D, A-14 to A-30) is unreported.

JURISDICTION

The judgment of the court of appeals is dated August 1, 1985 (App. A). Petitioner's motion for rehearing and suggestion for rehearing *en banc* was denied on November 21, 1985 (App. C) and the mandate was issued on December 5, 1985. On February 11, 1986, Mr. Justice William H. Rehnquist extended the time within which to file a petition for a writ of certiorari to and including March 19, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

INTERNATIONAL TREATIES, CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The relevant treaties involved are the United Nations 1951 Convention and 1967 Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. 6577. The United States has undertaken, by its signature to and Senate ratification of the Protocol, to apply articles 2 to 34 inclusive of the Convention to refugees as defined in the Protocol. For the purpose of this petition for a writ of certiorari the term "refugee" shall, according to the Protocol, mean and apply to any person who "**owing to well-founded fear of being persecuted for reasons of***membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.**" The articles of the Convention which are *relevant* as regards this petition are:

Article 3, Non-Discrimination. The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to***country of origin.

Article 28, Travel Documents. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory***

The Fifth Amendment to the United States Constitution provides that "[n]o person shall***be deprived of life, liberty, or property, without due process of law***."

§242(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §1252(b)(3), provides that "the alien shall have a reasonable opportunity to***present evidence in his own behalf***.

The relevant provisions in the Code of Federal Regulations, 8 C.F.R. §3.1(e), §103.2(b)(2), and §108.2, are shown where referred to in **Reasons for Granting the Petition.**

STATEMENT OF THE CASE

Petitioner, Bertil Sagermark, hereinafter "Sagermark" or "Petitioner", is a Swedish national seeking recognition of refugee status pursuant to the 1951 Convention as incorporated in the 1967 United Nations Protocol Relating to the Status of Refugees. On the one hand, he fears, on the basis of past traumatic experience, the very possession of a Swedish passport. On the other hand, he is trapped in a Catch-22 situation as unable to avail himself, in the absence of an international travel document, of the privilege of voluntary departure from the United States which was reinstated by the Board of Immigration Appeals (A-12). The recognition by the U.S. government of his status as a political refugee from Sweden which Sagermark has been seeking from within the United States for more than 12 (twelve) years would under Article 28 of the Convention entitle him to be provided with a U.N. refugee travel document and thus enable him to leave the United States and settle in a country of his choice in the company of his Guatemalan wife, Francisca Walters Mazariegos, and two U.S. citizen sons, 9 and 3 years of age.

Sagermark is a 66 year old civil engineer who, at the time of the events which form the basis for his claim to refugee status, was a legal resident of Spain. There he worked as a SELF-

EMPLOYED consulting engineer from his office and residence in Edificio Espana, Madrid. In such capacity he had a joint venture agreement with "Linden Cranes, a Swedish company" (A-1) with a view to the manufacturing under license of its building cranes in Spain.

The lower court states, however, totally erroneously that "Sagermark...was employed by Linden Cranes" and that he after having "modified the designs...attempted to market them independently" (A-1).

The lower court's opinion is fraught with misinterpretations, misrepresentations, and omissions in regard to the circumstances and central operative facts on which the denial of refugee status was based.

Not only did Sagermark not "attempt...to market [the modified designs] independently," it is equally false, in the multiple respects indicated in Appendix D, that "[w]hen Linden [Cranes] found out about Sagermark's actions, it brought charges against Sagermark, first for embezzlement, and later for grave disloyalty to principal."

Furthermore, the court of appeals misleadingly stated that "embezzlement" and "grave disloyalty to principal" both were "crimes under Swedish law," thereby implying that such crimes could have been or had been committed. The court of appeals ignored the crucial fact that the Swedish prosecutor's criminal complaint (A.R. 391 to 395) does not list any one of the **prima facie** elements of either crime and disregarded what should have been self-evident, namely, that a conviction based on such a grossly defective instrument could only have been obtained from a court bent on conspiring with the prosecution to obstruct the administration of justice.

The court of appeals also erred when it failed to observe that it is elementary under international law and, hence, the domestic law of the United States that the Swedish courts, lawfully, were not allowed to exercise criminal jurisdiction within the territorial boundaries of Spain as to any person, regardless of his or her citizenship, who continued to remain in the country, Spain, where all acts and events in relation to the

alleged crime had taken place. For "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana,* 175 U.S. 677 (1900).

The joint venture agreement with Linden Cranes had been signed in April 1961, some time after Sagermark had established himself in Madrid as an independent entrepreneur. All development and promotion costs were to be borne by Sagermark who thus never, ever, was an employee of Linden Cranes. *Cf.* Appendix D, A-15 and A-17 to A-20. The fact that the Swedish crime of "disloyalty to principal" requires not only a fiduciary relationship but also a qualified employment situation where the employee is in such a "position of trust" that he acts on behalf of the employer with binding detrimental effect for the latter presumably led the court of appeals to assume, without any basis whatsoever therefor in the administrative record, that Sagermark at least "was employed by Linden Cranes." A-1.

In 1962 Linden Cranes tried to force Sagermark out of a tripartite agreement for the manufacturing of cranes under license in Spain where the third party was a Spanish company, Ferrovias y Siderurgia, S.A., hereinafter "Ferrovias". **Ferrovias is not even mentioned in the court of appeals' opinion.** Linden Cranes agreed with the public prosecutor, Helge Hellekant, in Linden Cranes' home town of Vaesteras in Sweden that Sagermark was to be lured to visit Vaesteras where he with the assistance of Hellekant would be forced to sign over to Linden Cranes his part in the agreement with Ferrovias. *Cf.* Fact Sheet on The Sagermark Affair, A.R. 461 to 475. Sagermark was to be detained by Hellekant in Vaesteras if he did not "voluntarily" hand over his rights derived from the agreement with Ferrovias to Linden Cranes, and he would be kept in jail until Linden Cranes had been able to visit Madrid in Sagermark's absence in order to persuade Ferrovias to agree to keeping Sagermark out of the agreement. The plot failed when the chief criminal investigator in Vaesteras alerted Sagermark and let him use the police telephone in order to send a message to his office in Madrid and, in particular, to Ferrovias in the same city.

It ought to be a safe assumption that the court of appeals would not normally have overlooked such decisive circumstances as the glaringly unlawful exercise by the Swedish courts of territorial jurisdiction **within** the sovereign State of Spain or ignored the **trumped-up** character of the charges as to which, under international law, only the Spanish judicial system would have had jurisdiction if it could have been alleged that any crime had been committed.

The court of appeals' statement that, after having been allowed, in December 1962, to **return** to his home and place of work in Madrid, "Sagermark refused to return **(sic)** to Sweden for trial [and that t]he Swedish government asked for his extradition, resulting in his serving 36 days in a Barcelona jail until Spain decided to refuse the extradition request" is grossly misleading and was most thoroughly rebutted in Petition for Rehearing **in banc** (Appendix D) as surreptitiously implying that Sagermark was a fugitive from Swedish justice.

The court of appeals continued:

> "Sagermark returned **(sic)** to Sweden in 1967 and was tried and convicted of grave disloyalty to principal. On appeal, the charge was reduced and Sagermark was neither fined nor jailed. His engineering license was not revoked.
>
> Sagermark took his case to the Swedish Supreme Court five times without success. He also complained to the Parliamentary Ombudsman for Justice [and the Chancellor of Justice] about alleged mishandling of his case. After the Ombudsman took no action, Sagermark sued the judges, prosecutors, and other governmental officials involved in his case, but the suits were dismissed for various reasons. Sometime thereafter, the Swedish Parliament granted immunity from suit to public officials acting in their official capacities."

The errors contained in this account of what the court of appeals perceived to be the facts of the case were "indeed, so multiple and of such insidious nature" that they could not be dealt with within the limited space allowed for a petition for rehearing (A-29).

§ 242(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252(b)(3), provides that "the alien shall have a reasonable opportunity***to present evidence in his own behalf." Such opportunity must encompass an obligation for the fact-finder, the Immigration Judge, to fairly consider the evidence regardless of whether presented in the form of documents or as oral testimony at a hearing. As a comparison of the court of appeals' opinion with the Administrative Record proves, however, it was one thing to have a constitutional right to due process and a fair hearing and quite another matter to persuade the reviewing court to enforce it.

Appendix E (A-31 to A-39), Extract from Administrative Record (A.R. 261 to 273) illustrates how important testimony was ignored with regard to Petitioner's claim that he was the victim of a wholesale conspiracy from its maladroit inception in November 1962 when Linden Cranes had enrolled its home town prosecutor for the purpose of keeping Petitioner in semi-detention in Sweden with the assistance also of its home town court while Linden Cranes would be allowed to go to Spain in order to try to persuade Ferrovias to join in fabricating such evidence as would be desirable to justify Sagermark's detention.

As the Immigration Judge chose to totally ignore Sagermark's testimony as well as documentary evidence with regard to the escalation of the 1962 commercial extortion attempt into a major conspiracy to obstruct justice in which also the allegedly Supreme Court of Sweden was to become inextricably involved, one must not wonder how the court of appeals could find that "Sagermark's due process attack on the fairness of the hearing he was granted must***fail" (A-9).

For the court of appeals **relied on the Immigration Judge's ability or willingness to state the facts** of the case with fairness and accuracy **instead of itself "review[ing] the whole [Administrative R]ecord"** when "making***determinations," pursuant to 5 U.S.C. § 706 (1976), whether it should "compel agency action unlawfully withheld***[or] hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right***; (D) without observance of procedure required by law; (E) unsupported by substantial

evidence***; (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court." By relying on the Immigration Judge instead of itself "review[ing] the whole record" the court of appeals violated Petitioner's constitutional right to due process and a fair hearing effectively denying him judicial review. Thus the court of appeals overlooked the question-and-answer dialogue between the Immigration Judge and Petitioner as to how the thwarted extortion attempt in the Linden Cranes home town of Vaesteras developed into a major obstruction-of-justice affair characterized by the fact that the Swedish Supreme Court ultimately, in 1969, was to be persuaded to act as a rubberstamp for the Parliamentary Ombudsman for Justice and his co-conspirators, the Chancellor of Justice and the Supreme Prosecutor. *Cf.* A.R. 423 and 510. Appendix E is evidence of the extreme difficulties Petitioner met in having to deal with a fact-finder who, because he quite evidently had not done his homework by at least cursorily reviewing the documentary evidence which had been introduced well in advance of the hearing, asked the wrong questions and interrupted Petitioner in such critical points when he ought to have been allowed to continue, making the whole hearing meaningless.

When stating that "Sagermark took his case to the Swedish Supreme Court five times without success" the court of appeals ignored what the Swedish Supreme Court judge referee Sara Falk had testified in *Exhibit 59,* A.R. 552, about Sagermark's case having been **"programmed for a negative outcome."** The court of appeals did thus disregard what Sara Falk had felt obliged to reveal to a new Chancellor of Justice, although more than 10 years after it actually happened, thereby sentencing herself to be forever ostracized in regard to her colleagues in the Swedish judiciary (A.R. 550 to 554):

> As to cases which can be perceived as programmed for a negative outcome***one cannot avoid recalling the case against *civilingenjor* J.B. Sagermark, which attracted the attention of the press (NJA 1969 C 965). One day in the spring of 1969 I was stopped outside the Supreme Court building by Bengt Lannergren, at that time the Chancellor of Justice, who asked me how things were going in the Sagermark case. It is in

itself extremely strange that the Chancellor of Justice was keeping track as to which cases had been assigned to a subordinate official. The question as to why and and how this information had been transmitted cannot be lacking in interest. Lannergren***expressed his opinion that I ought to work in such a way that Sagermark's application for leave to appeal be denied. He stated that it would be awkward for him (i.e., Lannergren) if the case were allowed to go to the Supreme Court. Since Lannergren evidently did not understand that he was directing himself to the wrong person with his message, I raised the objection that if anything improper had occurred it would be best for the matter to be cleared up, the sooner the better. Lannergren replied that he was usually of the same opinion, but not when it came to Sagermark. Sagermark was acting in such a strange way, Lannergren stated. For he had turned to the Government in some matter in which Lannergren had been involved. The meaning of this was not clarified.

The handling of the Sagermark case was connected with several strange incidents that, taken together, cannot exclude the fact that even in other respects there was a commitment regarding the outcome of the case. Among other things, the handling of the case was made dependent upon the transfer of another case (no. T 71/68). The date for this transfer, which occurred shortly after Lannergren's intervention, was annotated on the page of the diary and signed. Subsequently this piece of the page of the diary was cut away and in its place another piece of paper was taped in. In this way, another piece of evidence regarding the handling of the Sagermark case disappeared. Sagermark—whose public defender had died in an early stage of the case—lost his appeal as well as a few later applications for a bill of review.

But why "would [it have been] awkward for [the Chancellor of Justice] if [Sagermark's] case [had been] allowed to go to the Supreme Court?"

NOTE: The forged page of the Swedish Supreme Court diary is attached as Appendix AA on page A-10.

The reason lies in what happened after the City Court of Vaesteras had issued a bench warrant for Sagermark's arrest on September 20, 1965 and Sagermark had fled to Israel only to discover that a Swedish Embassy official in Tel Aviv followed his every move, A.R. 272 to 273. He left Israel for Greece in December 1965, returning to Spain on February 22, 1966 after having been wrongly informed that he would have nothing to fear in connection with the Swedish extradition attempt he had been informed about. However, he was arrested in Barcelona on board the Italian ship he had boarded in Naples, Italy the day before.

Sagermark had been assured, before his departure from Greece on his way back to his home and office in Madrid via Rome, Genua, and Barcelona, that the Swedish authorities had realized that there was no way they could succeed to get him extradited to Sweden on charges that he had committed a crime in Spain. For it was elementary, as Black's Law Dictionary phrases it, that extradition is "[t]he surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender."

What Sagermark's informers could not have imagined was that the Swedish authorities had found a way to elegantly fool the Spanish government into issuing an extradition warrant for his arrest. The means applied by the Swedish Ministry of Foreign Affairs when contacting its Spanish counterpart was to pretend

(1) that Sagermark was "accused***of an offense outside [the] territory [of Spain];"

(2) that Sagermark was "accused***of an offense***within the territorial jurisdiction of [Sweden];" and

(3) that the Swedish courts were "competent to try and punish him."

All this was accomplished by the application of

(a) the automatic credibility which is attached to anything which comes under a Swedish dateline;

(b) the omission in the "Decree of Temporary Prison", *Exhibit 23,* A.R. 391 to 399, of any information as to the place of commission of Sagermark's "crime".

As Spanish government officials were to explain to Sagermark when it was already too late, the Spanish authorities had automatically assumed that he was "accused***of an offense [committed] outside [the] territory [of Spain]," that is, "within the territorial jurisdiction of [Sweden]." For how otherwise could the Swedish government have requested his extradition?

While the court of appeals noticed that "[t]he Swedish government asked for [Sagermark's] extradition, resulting in his serving 36 days in a Barcelona jail until Spain decided to refuse the extradition request," it failed to **mention why such REVERSE extradition attempt failed.** It ignored, in other words, the glaringly evident fact that such extradition attempt was doomed from the very beginning as blatantly illegal and that it could have had no other purpose than to harass Sagermark by letting him languish in a Spanish jail. If that is not PERSECUTION, what is then persecution?

This is not the place to report the extreme efforts the Swedish Embassy in Madrid was ordered to undertake in order to prevent Sagermark's immediate release from the Barcelona jail when a ridiculously low bail was set by a shocked instruction judge in Barcelona in order to let Sagermark return to his home in Madrid instead of having to wait for the extradition hearing from inside the Barcelona prison where he was to remain detained for 35 of the 36 days he was kept in custody. The Swedish conspiracy was totally coordinated from Stockholm. The Court of Barcelona, when informed of what had been going on, was outraged and ordered Sagermark's immediate release. Diplomatic courtesy required, however, the Spanish Ministry of Foreign Affairs to inform its Swedish counterpart that Spanish law, as a child could have understood, demanded that all crimes which had been committed in Spain be tried by the Spanish courts making extradition impossible.

In line with the principle that civilized nations must collaborate in the fight against crime, the Spanish government invited the Swedish government to send all information regarding Sagermark's alleged crime to Spain to enable the Spanish Ministry of Justice to make a decision whether Sagermark should be prosecuted or not.

The Swedish authorities ignored the Spanish government's request. Sagermark who was waiting for the case to be resolved found it impossible to continue his work as an internationally active consulting engineer both in view of the official declaration that **his right to a passport would be revoked if he did not "voluntarily" submit to the jurisdiction of the City Court of Vaesteras** and in view of the threat, as transmitted through Swedish newspapers, that **attempts would be made to extradite him from any other country than Spain which he would have to visit in order to comply with contractual duties.**

Dumbfounded into disbelief by the information received from Sweden that he would have to sit out the next 26 (twenty six) years in Spain because (1) Hellekant refused to allow the case against Sagermark to be tried in Spain and because (2) the Spanish Department of Justice could not be bribed to institute criminal proceedings in regard to a crime that evidently had not been committed, Sagermark turned to the Parliamentary Ombudsman for Justice from his refuge in the city where the "crime" had been committed.

What else could he do from his isolation in Madrid? His public defender, Anders Moren, whose livelihood depended on a good relationship with Hellekant, had been in virtual hiding for years in Vaesteras for he had not written Sagermark a single letter while a number of decisive procedural actions, as, for instance, the filing of the criminal complaint, had been taken against Sagermark. To write to the City Court of Vaesteras had proven to be an exercise in futility for all contacts had to go through his public defender who, already when Sagermark was kept in semi-detention in Vaesteras had been offered a place on the Linden Cranes board of directors. The City Court of Vaesteras refused at the same time to allow Sagermark to fire his public defender while declaring that Sagermark was legally bound by all actions and non-actions taken by his public defender "in his behalf."

Particularly distressing was that his then, in 1966, 78-year-old deaf-mute mother could not understand the legal niceties which made it impossible for her only child to visit her when she had to be hospitalized and had to undergo a series of operations.

Unfortunately, Sagermark did not understand at that time that a main function of the Parliamentary Ombudsman for Justice is to cover up judicial and executive wrongdoings; see *Exhibit 44*, "The New Totalitarians" by Roland Huntford, A.R. 510:

> *As in extremities of injury or dudgeon, the Englishman will appeal to the courts or approach his M.P., so will the Swede complain to the Ombudsman. ***The value of the Ombudsman is not in what he does, but that his existence by itself is a comfort. The fact that he is there to receive complaints seems by itself to be a guarantee against abuse. ***There is a danger inherent in an institution of this nature. People will not be disposed to guard their own rights, because they assume that the Ombudsman will do so for them. He has turned into a standing alibi for the government; as long as he is there, it is felt that all measures must necessarily be right and just.*

Hellekant, the Vaesteras prosecutor, presented all kinds of non-legal arguments to the Ombudsman and the Swedish press in order to justify his refusal to allow Sagermark to be tried in Spain. In the meantime Sagermark was informed by the Spanish authorities that they would be unable to help him to get prosecuted for an evidently non-existent crime. As there was no legal basis for Swedish jurisdiction to be exercised, such excuses were put forward by Hellekant as that there were "no such technical experts in Spain," or that Sagermark had an old-deaf mute mother in Sweden and sooner or later would have to visit her.

A rapidly escalating conspiracy between the Ombudsman, the Supreme Prosecutor, and the Chancellor of Justice was in full bloom in the spring of 1967.

The court of appeals denied Petitioner due process and a fair hearing when it disregarded, as the Immigration Judge and the Board of Immigration Appeals had done, that the Chancellor of Justice had declared "that he was **usually of the same opinion** [as Sara Falk], **but not when it came to Sagermark**," namely, "that if anything improper had occurred it would be best for the matter to be cleared up, the sooner the better," and when it misinterpreted the evidence regarding the obstruction-of-justice manipulations of the Ombudsman and the Chancellor of Justice referring to the

forgery of the Supreme Court diary page (A-10) and Sara Falk's self-indicting testimony as nothing more than a "modicum of evidence [in regard to Sagermark's] claim of conspiracy" without spending one more word on it (A-7).

Thus the court of appeals failed to acknowledge that the reason why "Sagermark took his [SHAM conviction] to the Swedish Supreme Court five times without success" was that "it would [have been] awkward for [the then Chancellor of Justice] if the case [had been] allowed to go to the Supreme Court" via the granting of Sagermark's application for leave to appeal his conviction or via any one of his subsequent four applications for a bill of review.

Similarly, the court of appeals overlooked or ignored the fact that the Parliamentary Ombudsman for Justice and the Chancellor of Justice (the attorney generals for the *Riksdag*, respectively, the Chief Executive, then His Majesty the King, nowadays the Government) had started to conspire to obstruct justice in Sagermark's case long before he ever appeared in Sweden to be tried on trumped-up charges in regard to a non-existent crime as to which the Swedish courts could have no jurisdiction whatsoever.

Mr. Justice Oliver Wendell Holmes once said that there could be no jurisdiction without possibility to exercise power. Well aware that it was so, the Swedish courts secured their sham jurisdiction over Sagermark by applying passport renewal threats. Hence, Sagermark's rationale for refusing to accept, ever, a Swedish passport without being given absolute guarantees that the possession of a Swedish passport never again will be used to force a Swedish citizen resident of another country to accept a sham conviction by a Swedish court in regard to purely civil-law acts which in their entirety have taken place in his new home land.

Had the Immigration Judge not interrupted Sagermark during the questioning it may at least be assumed that the outcome of the hearing might have been different. And the reviewing court of appeals might not have misinterpreted the conspiratory role

played by the Ombudsman by stating: "[Sagermark] *also* complained to the Parliamentary Ombudsman for Justice about alleged mishandling of his case," and adding that "the Ombudsman took no action." A-2.

Had the Immigration Judge not interrupted Sagermark it may be assumed that the reviewing court would have realized that it would have been no easy thing to do for the Ombudsman to take "action" in regard to the escalating "mishandling of [Sagermark's] case" which was of the Ombudsman's own making.

The unadulterated truth is that "[Sagermark] complained to the Parliamentary Ombudsman for Justice about alleged mishandling of his case," not "also", but ONE-YEAR-AND-A-HALF **before** he was to be compelled to go to Sweden for a series of sham trial proceedings.

The alternative to a foregone-conclusion sham conviction in the Swedish courts would have been to remain *de facto* incarcerated within the territorial boundaries of Spain until 1992, that is, until 30 (THIRTY) statute-of-limitation years would have passed after the May 29, 1962 date of the signing of the agreement with Ferrovias, in Madrid. Sagermark had to accept the certainty of a sham conviction because this was the only way in which he would be able to see his deaf-mute mother in Sweden again, at least if he wanted to see her again before her 111th birthday.

The full truth is thus that the "alleged mishandling of [Sagermark's] case" burst all dams of judicial prudence after Sagermark had complained to the Ombudsman from Madrid. Instead of complying with his duties as the *Riksdag's* guardian of the law, the Ombudsman engaged himself in a conspiracy with the Chancellor of Justice to cover up the grave prosecutorial and judicial errors which had been committed against Sagermark.

Sagermark had been released from Barcelona prison on March 29, 1966 when the Swedish extradition request had been denied. He had to abandon his professional activities, unable as he was to leave Spain any more, and dedicate himself entirely to the all-consuming task of virtually having to bombard the Parliamentary Ombudsman for Justice, the Chancellor of Justice, and the

Supreme Prosecutor, demanding justice from his office in Madrid. He soon discovered, however, that these supreme guardians of the law increasingly were conspiring to deceive and mislead him. Therefore, he finally saw himself forced to leave "voluntarily" for Sweden in December 1967 realizing that the cover-up had gone too far and too high and become too deeply entrenched to be unraveled from Madrid. At that time Sagermark had not yet read what Columbia University Administrative Law Professor Walter Gellhorn had said in "Ombudsmen and Others", Exhibit 30, A.R. 423:

> "[The Ombudsman and the Chancellor of Justice] attempt***to minimize confusion by private discussions over the lunch table several times weekly. The Chancellor of Justice before initiating an investigation on his own motion is likely to telephone to exchange notes concerning the 'querulents' who may write to both of them simultaneously."

At the time of his arrival in Sweden Sagermark had not yet realized that the outcome of his coming ordeal in the City Court of Vaesteras and the Svea Court of Appeals and of his still waiting five-fold battle with the allegedly Supreme Court had been decided while he was still in Madrid, notably, during "private discussions over the lunch table" between the Ombudsman, the Chancellor of Justice, and the Supreme Prosecutor.

The situation had, however, changed diametrically since the Swedish authorities had demanded his reverse extradition from Spain in 1965 and they, after his arrest in Barcelona on February 22, 1966, had asked the governments of France and Denmark to allow the plane with which Sagermark would be brought to Stockholm under police escort for permission to land in Paris, respectively, Copenhagen. For Sagermark had, in the one year and eight months meantime, been inundating the offices of numerous top-level law enforcement authorities with complaints and inquiries having in the process made hair-raising discoveries as to clandestine activities by the Ombudsman in the affairs of the judiciary. Accordingly, when Sagermark now asked the Swedish

government to provide him with an airline ticket from Madrid for the sole purpose of presenting himself for "trial" in Vaesteras the Supreme Prosecutor declared that he "had no interest in him" although the Ministry of Foreign Affairs just a couple of years earlier had gone to such lengths as to apply fraud and deceit in relation to its Spanish counterpart to obtain Sagermark's extradition to Sweden. It was thus all but glaringly obvious that Sagermark had succeeded in unraveling too much during his long-distance muck-raking activities to make his presence in Sweden desirable any longer. Denied an airline ticket Sagermark had to pay his own fare only to discover upon his arrival in the Stockholm airport that every effort had been made to subtly persuade him to return to Spain as soon as possible without making waves by appearing for a "trial" in Vaesteras. The following excerpt from the transcript of the June 19, 1981 hearing, A.R. 273 to 274, is a continuation of Appendix E, A-31 to A-39, which ends with a number of interruptions of an Immigration Judge who did not wish to know anything about Ombudsman conspiracies but only when Sagermark "went back" **(sic)** and was informed that he "went back in December 1967 when [he] was threatened with otherwise being forced to go back to Sweden by the cancellation of [his] passport:"

IMMIGRATION JUDGE: Now, did you have a trial at that time?

SAGERMARK: When I arrived in Sweden on December 23, 1967, as the police had been informed that I was arriving—I have telegrams to prove that—the police was withdrawn from the airport in Stockholm, and I walked around freely in Stockholm for about 10 days. Then I called the prosecutor and said: "I want to be arrested."***I simply had to take the train to Vaesteras to be arrested.

The prosecutor had asked me not to come to Vaesteras until after the holidays—it was a four-day holiday—because I could not be freed the same day. "No," I said, "I want to be arrested." So I went before the holidays. I was detained for four days, and I succeeded to keep myself in jail for another four days, because I knew at that time that they were only manipulating in order to gain time. If I were not kept in custody they could prolong that indefinitely for years***. My only way to get a speedy trial was to force the Swedish authorities to keep me in custody.

After eight days, however, the court refused to keep me in custody, and I was more or less thrown out of jail. That was on January 12, 1968. On January 16, I refused to accept, to respect the conditions which were connected with my release from detention, so I had to go back to jail [the same day]. I had what is supposed to have been a trial in the middle of February 1968. It is to be noticed that the [new] attorney I was given was dying of cancer—it is in the court's records that he did not want to have the appointment because he was extremely sick with cancer, and he died in June of the same year. So he [was unable to] take care of the proceedings.

****

IMMIGRATION JUDGE: What sentence did they impose upon you?

SAGERMARK: No sentence of practical importance.

IMMIGRATION JUDGE: Did they send you to jail?

SAGERMARK: No. It was a conditional sentence.

IMMIGRATION JUDGE: What was the condition?

SAGERMARK:***that you shall in the future, during a period of two years, be a law-abiding citizen, that's all.

****

IMMIGRATION JUDGE: Is that considered a crime in Sweden, this type of conviction, like a bank robber would have a criminal record?

SAGERMARK:***when a Swedish court is persuaded that no crime has been committed then this is reflected in a lenient sentence.***Conditional sentence in Sweden is considered by the jurists to be the same thing as an acquittal when it is [imposed] in a case where a serious crime is charged. Because you can't charge [someone with] such a serious crime as***grave disloyalty to principal and then just let the defendant off with a conditional sentence.

IMMIGRATION JUDGE: But you got a conditional sentence.

SAGERMARK: Yes, because no crime had been committed.

IMMIGRATION JUDGE: So you were, in reality, not really convicted?

SAGERMARK: Yes, Sir. But Your Honor, please observe one thing, that in the Swedish legal system a conviction***barred my right to compensation for legal expenses and also every action against Linden Cranes in a civil court because of the function of the conviction as evidence.

IMMIGRATION JUDGE: We were talking earlier in the hearing about how you had your case up before the Swedish Supreme Court on five occasions***What were you appealing if you were not convicted?

SAGERMARK: Well, I was convicted, but the sentence reflects the attitude of the court that is was not a question of a crime at all, because you cannot get a conditional sentence on such a grave crime which carries the penalty of six years in jail.

It should be noted that when Sagermark appeared before the City Court of Vaesteras for the first time on January 12, 1968, he had to do so without the assistance of his new public defender who was unable to attend the hearing because of chemotherapy treatment. When he told the court in unmistakeably clear legal terms that the court had no jurisdiction to entertain the case the court's reaction was a twofold one. Firstly, Sagermark was misinformed that his objection had come too late: such objection should have been made by his first public defender on September 6, 1965 when Sagermark had ignored the court's summons and remained where the alleged crime had been committed, that is, in his residence and work place city of Madrid. (Sagermark could not then know that the court had misapplied a civil procedure statute onto a criminal case although he understood what the court should have understood, namely, that a Swedish court cannot obtain territorial criminal jurisdiction in another sovereign State just because an ignorant or crooked attorney forgets to tell the court what it has an obligation to know **ex officio**) Secondly, Sagermark was punished for daring to question the court's jurisdiction over him by being ordered to undergo a psychiatric evaluation. *Cf. Exhibit 24*, A.R. 400 to 404, where the examining phychiatrist writes:

"***the examinee is obviously taking a wait-and-see position and is critical***of the persons and authorities who in one regard or another have been involved in the course of the events. His account is always borne with a very strong sense of justice and an obvious indignation peeps out when the examinee points to what he considers to be an expression of irrelevant side-effects on said persons and authorities.

****

From a medical-psychiatric viewpoint the examinee's high intensity ought to be noted, especially that this intensity appears to have resulted in his acting in such a way that he was arrested. No doubt the examinee is experiencing this as an adequate measure, but this ought to point to the inclination to push hard the formal legal aspects which can come to complicate the hearing of the case."

It certainly did. Petitioner's "inclination to push hard the formal legal aspects [did not only] complicate the hearing of the case." His stubborn belief that the integrity of the law must come before any brotherhood consideration was to cause the rubberstamp creation of an infamous public official **criminal** immunity law and such havoc in the Swedish legal system that the only viable solution was for Petitioner to flee to the United States where he arrived on February 22, 1974, eight years to the day after his arrest in Barcelona.

The following misconception in the court of appeals' opinion requires particular attention:

"After the Ombudsman took no action, Sagermark sued the judges, prosecutors, and other governmental officials involved in his case but the suits were dismissed for various reasons."

Firstly, "Sagermark [did not] SUE **the** judges, prosecutors***involved in his case." He acted as a private prosecutor, charging **not** THE judges and THE prosecutors "involved in his case" but such judges and prosecutors who had committed **ordinary** crimes like **forgery** and **unlawful deprivation of liberty** in the course of the gigantic conspiracy to obstruct justice which increasingly was being coordinated by the Parliamentary Ombudsman for Justice.

Secondly, the lower court did not reveal "for [what] various reasons" that Sagermark's "suits" were dismissed. One popular method used by the courts, as instructed by the Ombudsman, was to confound the wholly different concepts of "LEGAL STANDING" and "MENTAL CAPACITY". It is all in the record, although the lower court overlooked it. Sagermark was thus, as a condition for being allowed to prosecute as the victim/prosecutor, ordered by the courts to go to a government-employed psychiatrist in order to obtain a certificate as to his LEGAL STANDING. Another method which was applied by the courts was to pretend that crimes committed in office, such as murder, rape, and forgery, were "official" crimes, that is, such crimes as could only be prosecuted by the Parliamentary Ombudsman or the Chancellor of Justice. The lower court does not mention that Sagermark also instituted criminal proceedings against the Ombudsman and the Chancellor of Justice who carelessly during the earlier phases of the cover-up had committed such crimes against Sagermark which he was entitled to prosecute as the victim/prosecutor. Typical for how the Swedish system works was that Sagermark's only recourse against the courts when they threw out Sagermark's criminal complaints against the Ombudsman or the Chancellor of Justice was to file a complaint with the same Ombudsman or the same Chancellor of Justice.

The court of appeals states that Sagermark "has not provided adequate evidentiary support for his theory" that "the Swedish government enacted a public official immunity law in response to his lawsuits against various Swedish officials he believed were conspiring against him," A-7.

Firstly, it was not "the Swedish government [that] enacted***" but the legislative body, the **Riksdag**, which was deceived into unanimously rubberstamping a practically invisible rider to a totally unrelated bill dealing with the appetizing funding of political parties. This rider did, seemingly, do nothing else but delete the first letters **aembets** (official), in the word **aembetsbrott** (official crime), in the Code of Judicial Procedure. The effect, although enormous in its potential consequences, as well as the existence of such law itself, was not discovered until

several years later when the individual, Sagermark, against whose activities as a private prosecutor "the immunity law" had been aimed already had been battling several years for U.S. recognition of his status of political refugee.

Secondly, the expression "public official immunity law in response to [Sagermark's] lawsuits***"is misleading in the sense that it was the question of **criminal** immunity for **ordinary** crimes, such as **forgery** and **unlawful deprivation of liberty**, as committed by public officials, and not the question of civil suits.

Thirdly, Sagermark did not "believe" but contended and contends that "various Swedish officials***were conspiring against him." To request a higher authority in support of his "theory" than the Supreme Court judge referee Sara Falk and the forgery which is reproduced on page A-10 as Appendix AA is to demand the impossible.

Fourthly, as stated in Appendix D, Petition for rehearing in banc, A-30, Sagermark could have furnished irrefutable "'proof [not only] that the Swedish government has***institutionalized dissidents [but that] the Swedish government enacted a public official **[criminal]** immunity law in response to his [criminal prosecutions] against [such] various Swedish officials [as the Parliamentary Ombudsman for Justice, the Chancellor of Justice, and the Supreme Prosecutor]' if the Immigration Judge had not prevented him from presenting oral testimony from Sweden and New York/Boston." *Cf.* Questions Presented, No. 3.

Fifthly, The United Nations High Commissioner for Refugees states the following in Handbook on Procedures and Criteria for Determining Refugee Status:

> "***Often***an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.***the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner.***there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt."

Petitioner's credibility was given high marks by the fact-finder, the Immigration Judge, A.R. 321: "I consider you to be a very sincere man and a man of very high principles***."

To demand even more conclusive evidence as to the existence of a wholesale conspiracy against Sagermark involving the highest ordinary law and constitutional law enforcement authorities of the land would equate requiring him to present a photo of the particular Swedish Supreme Court Justice taken in the precise moment when the Justice, armed with a pair of scissors, a tape dispenser, and a pen, destroyed the evidence contained in the Supreme Court diary as to the interference with the administration of justice of the Supreme Court in Sagermark's singled-out case of the Chancellor of Justice substituting it with innocent, but incomplete, information.

The bulk of the "some 62 exhibits" (which the court of appeals perceived as indicating that Petitioner "had a 'reasonable' opportunity to present his case," A-9) were as stated in Question Presented, No. 4, intended "for the Immigration Judge's personal and general information only and certainly not [as was to be the case] for the squandering of a major part of the 'six-hour hearing' in the process." The Immigration Judge accepted one of these exhibits, No. 12, "Law and Justice in Sweden", as indication "that the Swedish justice system follows those general doctrines of justice and due process as set forth in the laws of other Western countries" without asking himself the logical question how it was possible, in such a "Western" system, that so many and so hair-raising procedural irregularities, to use a kind word, could have passed as "due process" in Sagermark's case. The Immigration Judge did thus err grossly when not realizing that no other explanation can be given, in such a "Western" system, than the one given by Sara Falk, namely, that Sagermark's case had been "programmed for a negative outcome" and "that even in other respects [than the Chancellor of Justice intervention] "there was a commitment regarding the outcome of the case," A.R. 552 to 553 and pages 10 and A-10 of this petition.

The court of appeals' statement "nor would the truth of [Petitioner's] allegation [as to the "public official immunity law"] establish persecution given that his suits were dismissed prior to

the enactment of the immunity law" must, as indicated in Petition for Rehearing in banc, A-30, be interpreted to mean that **Petitioner** has "establish[ed] persecution". For **his suits were dismissed on such unlawful grounds which subsequently were legalized by way of the "public official immunity law".**

The court of appeals considered that "the IJ's failure to provide [Sagermark] with a copy of IJ's June 19th oral decision until some 14½ months after he requested it***did not amount to a due process violation," A-8 and A-9. The fact is, however, that such "copy of the IJ's June 19th oral decision," as he immediately discovered but then could do nothing about, was a heavily doctored version of the true transcript which somehow seems to have gone overboard. As stated on page 2, Sagermark had, however, to wait another eternity before he succeeded to force Respondent to provide him with a non-doctored transcript, resulting in a total waiting time of more than two years and five months. Maybe the court of appeals would have found 2 years and 5 months to constitute a violation of Petitioner's constitutional rights to due process. Where lies, in such a case, the borderline between due process and violation of due process?

Justice so delayed became justice denied. For such delays were accompanied by a foreseeable progressive deterioration of Petitioner's health and, consequently, of his financial situation hampering him increasingly in his efforts to adequately lay his case before the Board of Immigration Appeals and, subsequently, the court of appeals. **See** letter to this Court on February 25, 1986 by Dr. J. William Allgood of Escondido, California:

> "I am writing concerning Mr. Johan Bertil Sagermark.***Since [January 31, 1986] Mr. Sagermark in spite of continued iron therapy, has had a worsening of his anemia with hemoglobin falling from 8.9 to 8.4 and hematocrit falling from 29 to 27. Because of this he has had increased weakness but more importantly has not responded to iron therapy. Therefore he is now diagnosed as having a primary refactory anemia. The prognosis for cure or even significant remission is poor and although therapy is being continued there has been no noticeable response to date.
>
> In my opinion Mr. Sagermark is significantly, totally, and possibly permanently disabled."

REASONS FOR GRANTING THE PETITION

Counteracting the weakening of international law

1. The facts in this case have been totally overlooked or misapprehended by the court of appeals. Operative facts of the greatest moment, such as the blatant illegality, not only under international law, of Petitioner's conviction, have not even been considered in the lower court's opinion. These material errors are not only abundant: Such most dramatic sets of facts as the cover-up exercise by the Swedish executive, laundering its actions through the office of the Parliamentary Ombudsman for Justice, of exclusive and absolute criminal jurisdiction on Spanish soil in regard to purely civil-law acts which in their entirety had taken place within the territorial boundaries of the sovereign State of Spain have been systematically excluded in the lower court's opinion. The court of appeals erred grossly when it did not take judicial notice of such glaring lawlessness as taints the Swedish government's actions in connection with its fraudulent attempt to extradite Sagermark from his *forum delicti commissi* and *forum domicilii* in Spain to sham trials in courts which were fully aware that they had no jurisdiction to entertain the case.

Mr. Justice Holmes said that there could be no jurisdiction without possibility to exercise power. The power which gave the Swedish courts their jurisdiction in regard to Sagermark's actions in Spain consisted in the availability of an old deaf-mute mother whom her only child could be counted on to visit and the possibility to threaten Sagermark with the cancellation of his passport if he did not show up before Linden Cranes' home court of Vaesteras.

When Sagermark fled to the United States in February 1974 in order to avoid being thrown into a lunatic asylum for questioning the legality of the Swedish judicial proceedings in his case he **could not imagine that the United States government and a United States Court of Appeals would not stand up in defense of the validity of international law.**

The granting of this petition for a writ of certiorari would enable the most powerful court in the world to strengthen the rule of international law.

Departure from the accepted and usual course of judicial proceedings calling for exercise of the Supreme Court's power of supervision

2. An example of a different kind of prejudicial misrepresentation is present at the very outset of the lower court's opinion:

> "Bertil Sagermark, a Swedish citizen, is a civil engineer who was EMPLOYED by Linden Cranes, a Swedish company, in 1961 to market their cranes in Spain."

When receiving the court of appeals' opinion Petitioner did not have to read farther to know with certainty that the final words in the 11-page opinion would be: "The Petition for Review is DENIED."

The court of appeals had been roaming outside the record and made a crucial damaging assertion which was manifestly untrue. And the existence of an employer/employee relationship between Linden Cranes and Petitioner was a minimum, although not at all sufficient prerequisite for a conviction for "disloyalty to principal" to be possible. *Cf.* Petition for Rehearing in banc, Appendix D, A-15:

> "**Petitioner was never,** EVER, in any way **an employee of Linden Cranes.** How this Court has determined an employer/employee relationship between Linden Cranes and petitioner is a total mystery. For no basis therefor exists in the INS record, nor, quite remarkably and even more importantly, in the Swedish prosecutor's information, or, criminal complaint, outside of which framework, as is in the nature of the judicial process, not even Swedish courts are allowed to roam freely, [although] they did so in petitioner's case, joining an Ombudsman-directed conspiracy."

Because the judicial review process does not provide an appropriate vehicle to deal with such a multitude of factual errors, omissions, and misrepresentations as those which the court of appeals' opinion is based upon the ruling in **Hetzer** v. **INS,** 420 F. 2d 357 (9th Cir. 1970) may suggest that this case be remanded to Respondent in order to correct the record.

INS disregard of own regulations

3. The District Director, when denying Sagermark's application for political asylum on May 17, 1978 had totally ignored what the Code of Federal Regulations said about the asylum applicant's rights in regard to rebuttal of the State Department's so-called advisory opinion, A.R. 139 to 142, and it took Sagermark years to force the District Director to provide a copy of it, needless to say when it was several years too late. Although the District Director, according to case law, was obliged to vacate his decision denying Sagermark asylum and let him review and rebut the State Department advisory opinion, the District Director chose to completely ignore Sagermark's much-repeated requests. *Cf.* 8 C.F.R. § 108.2 which provides that "[i]f any decision will be based in whole or in part upon a statement provided by the Department of State,***the applicant [for asylum] shall have an opportunity for inspection, explanation, and rebuttal thereof as prescribed in § 103.2(b)(2)" which, in its turn, provides that such opportunity shall be offered "before the decision is rendered."

The District Director's error is particularly serious from the point of view (1) that Petitioner had been denied an interview, (2) that the true facts of the case easily could have been ascertained in a non-adversary setting, that is, on the District Director level, and (3) that the judical review process does not provide an appropriate vehicle to deal with the multitude of factual distortions which the court of appeals' opinion is based on.

The Board of Immigration Appeals when reviewing the merits of Sagermark's claim to refugee status also ignored the Code of Federal Regulations. For it denied Sagermark oral argument in violation of 8 C.F.R. § 3.1(e) which reads in pertinent part:

> Oral argument shall be heard by the Board, upon request, in any case over which the Board acquires jurisdiction by appeal***

Worse still, the Board denied Petitioner an opportunity to present **written** argument with regard to the fact that the Immigration Judge **did not address the paramount issue whether Petitioner "had a well-founded fear of persecution."** The courts have repeatedly held that it cannot be tolerated that the Immigration and Naturalization Service ignores its own regulations. It would thus seem appropriate that Sagermark's petition for a writ of certiorari be granted even for this reason.

CONCLUSION

This case raises the question whether, contrary to the holding in *The Paquete Habana,* 175 U.S. 677 (1900), international law no longer is an integral part of the domestic law of the United States.

It also raises the burden of proof issue which presently is before this Court in *Cardoza-Fonseca* vs. *INS,* 767 F.2d 1448 (9th Cir. 1985).

However, the distortions of the facts, in the form of misinterpretations, misrepresentations, and omissions, on which the court of appeals' denial of judicial review was built must lead to the question being asked if it can be meaningful to discuss how the law was applied when the facts are all wrong.

As Lasky said, 19 Sw. L.J. 679, 689):

> An opinion writer is entitled to the greatest leeway in his law as in his reasoning, for they are his. But honesty allows no leeway in his statement of the facts, for they are not his. There is no substitute whatever for adherence to the exact and precise record in the case. No 'result orientation' can justify omission of a single relevant fact or the inclusion of a single factual statement that is false.***
>
> Then there is an allied sin: the sin of going outside the record for facts that may or may not be so.***Roaming outside the record to make assertions of fact which are subject to serious dispute and which the appellate process furnishes no adequate procedure for trying***[is] inexcusable.

For these and foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,
BERTIL SAGERMARK
P.O. Box 27010
Escondido, CA 92027
IN PROPRIA PERSONA

March 18, 1986

APPENDIX A

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

No. 83-7426

INS No. A20-278-423
A22-435-152

BERTIL SAGERMARK, FRANCISCA WALTERS MAZARIEGOS, *Petitioner*

v.

IMMIGRATION and NATURALIZATION SERVICE, *Respondent*

OPINION

Filed August 1, 1985

Petition to Review an Order of the
United States Immigration and Naturalization Service

Submitted August 21, 1984*

Before: CHOY, *Senior Circuit Judge*, PREGERSON and CANBY, *Circuit Judges*

Bertil Sagermark
P.O. Box 27010
Escondido, CA 92027
IN PROPRIA PERSONA

*The panel finds this case appropriate for submission without oral argument. Fed.R. App.P. 34 (a) and Ninth Circuit Rule 3 (f).

CHOY, Senior Circuit Judge:

Bertil Sagermark, a Swedish citizen, is a civil engineer who was employed by Linden Cranes, a Swedish company, in 1961 to market their cranes in Spain. Sagermark eventually modified the designs and attempted to market them independently. When Linden found out about Sagermark's actions, it brought charges against Sagermark, first for embezzlement, and later for grave disloyalty to principal, both crimes under Swedish law.

Sagermark refused to return to Sweden for trial. The Swedish government asked for his extradition, resulting in his serving 36 days in a Barcelona jail until Spain decided to refuse the extradition request. Sagermark returned to Sweden in 1967 and was tried and convicted of grave disloyalty to principal. On appeal, the charge was reduced and Sagermark was neither fined nor jailed. His engineering license was not revoked.

Sagermark took his case to the Swedish Supreme Court five times without success. He also complained to the Parliamentary Ombudsman for Justice about alleged mishandling of his case. After the Ombudsman took no action, Sagermark sued the judges, prosecutors, and other governmental officials involved in his case, but the suits were dismissed for various reasons. Sometime thereafter, the Swedish Parliament granted immunity from suit to public officials acting in their official capacities.

Sagermark has waged a massive publicity campaign against the "700 to 800" Swedish officials he alleges conspired against him. He has written numerous books and pamphlets, and he has conducted news conferences and issued press releases to publicize his complaints against the Swedish government.

In 1975, Sagermark was admitted to the United States as a nonimmigrant visitor. Because he never departed, the INS initiated deportation proceedings in 1979. At a hearing before an immigration judge (IJ) on June 19, 1981, Sagermark admitted deportability but requested asylum.

At the hearing, Sagermark presented some evidence that certain governmental officials had attempted to hinder his appeals. But he has never been prosecuted for his publicity efforts nor

does he expect to be jailed if he returns to Sweden. Sagermark also claimed that he might be confined to a mental institution were he to return to Sweden. He testified that a judge warned him that those who demand their rights are occasionally institutionalized and that Sagermark was "lucky" to have been found sane in a 1968 examination.

The IJ announced his decision orally ruling that Sagermark had failed to demonstrate a well-founded fear of persecution. Sagermark was given appeal forms by the IJ, but he did not use them. Instead, he sent the IJ a letter which he labeled a "motion to re-open the proceedings." He also sent numerous other letters to the IJ complaining about the IJ's ruling. The IJ treated Sagermark's letter as a motion to reopen, which he then denied on August 3, 1981.

On August 14, 1981, Sagermark appealed the denial of the motion to the Board of Immigration Appeals (BIA). On March 31, 1983, the BIA, in a memorandum approving of not only the denial of the motion but also the IJ's decision on the merits rejecting Sagermark's asylum request, affirmed.

Sagermark now petitions this court for review of the BIA's decision affirming the IJ's denial of Sagermark's "motion to reopen." He also seeks review of the BIA's implicit affirmance of the IJ's ruling on June 19, 1981 rejecting Sagermark's request for discretionary asylum pursuant to 8 U.S.C. §1158 (1982) and withholding of deportation under 8 U.S.C. §1253 (h) (1982).

Jurisdiction to Review Merits

The INS contends that this Court has no jurisdiction to review the merits of Sagermark's request for asylum and withholding of deportation because he did not timely appeal the IJ's June 19 decision to the BIA, thus failing to exhaust his administrative remedies. 8 U.S.C. §1105a(c) (1982).

8 C.F.R. §242.21 (1984) provides that an appeal to the BIA must be filed within 10 days of the decision. While a literal reading suggests June 29 as the appropriate cut off date, another plausible view is that if a motion to reopen or reconsider is made,

then the 10-day period does not begin to run until the motion is denied. In other words, the 10-day period does not begin until there is a final decision by the IJ. This approach would have the benefit of avoiding an unnecessary BIA review were the IJ ultimately to decide to grant the motion while also allowing consolidation of all appeals so that they can be heard together by the BIA. *Cf. Hyun Joon Chung v. INS,* 720 F.2d 1471, 1473-74 (9th Cir. 1983) (six-month period for filing petition for review of deportation order to Circuit Court does not begin until motion is denied or proceedings are reopened and concluded), *cert. denied,* 104 S. Ct. 2659 (1984).

We need not interpret the INS regulation, however, because we find that the administrative tribunals have adequately reviewed the IJ's June 19 decision denying Sagermark's requests for asylum and withholding of deportation. The INS presented its position on the merits of the original decision to the BIA. That decision was addressed by the BIA when it affirmed the denial of the motion to reopen. The BIA described the decision as "thorough and well-reasoned." It also said that Sagermark "was given a fair opportunity but failed to establish that he has a well-founded fear of persecution within the meaning of the Act." Whether or not the decision on the merits was technically before the BIA, the BIA addressed it thoroughly enough to convince us that the relevant policy concerns underlying the exhaustion requirement—that an administrative agency should have a full opportunity to resolve a controversy or correct its own errors before judicial intervention—have been satisfied here.

Review of the Merits of Sagermark's Asylum and Withholding of Deportation Claims

(a) Burden

Because Sagermark's application for a grant of discretionary asylum under 8 U.S.C. §1158 was filed after deportation proceedings had begun, it is also treated by the INS as a request for withholding of deportation under 8 U.S.C. §1253(h). 8 C.F.R.

§208.3(b) (1983). While the case law has often confused the two provisions, *see Bolanos-Hernandez v. INS,* 749 F.2d 1316, 1321 n.10 (9th Cir. 1984) (discussing cases), the Supreme Court has clearly distinguished them. *See INS v. Stevic,* 104 S. Ct. 2489 (1984).

The Court, in *Stevic,* finally settled a conflict among the circuits by holding that an alien must establish a "clear probability" (more likely than not) of persecution to be entitled to withholding of deportation under §1253 (h). 104 S. Ct. at 2492. The Court also made clear that with regard to discretionary asylum under §1158, the alien must instead prove that he has a "well-founded fear" of persecution. 104 S. Ct. at 2497 & n.18. The Court did not decide the meaning of the phrase "well-founded fear" because that issue was not presented by the case. 104 S. Ct. at 2501. Nevertheless, the Court strongly hinted that it felt that the "well-founded fear" standard was less stringent than the "clear probability" test and suggested that an alien might fulfill his burden by merely providing objective evidence of a "reasonable possibility" of persecution. 104 S. Ct. at 2498.

This circuit takes a similar view. *See Bolanos-Hernandez v. INS,* 749 F.2d 1316. 1321 (9th Cir. 1984). Because the granting of asylum to those who qualify as "refugees" under the "well-founded fear" test is still discretionary, *see* §1158(a) *and INS v. Stevic,* 104 S. Ct. at 2497 n.18, whereas an alien who satisfies the "clear probability" test is automatically entitled to withholding of deportation, *see Chavez v. INS,* 723 F.2d 1431, 1432 (9th Cir. 1984); *McMullen v. INS,* 658 F.2d 1312, 1316 (9th Cir. 1981), it is logical that the the former test is less stringent. *See Bolanos-Hernandez,* 749 F.2d at 1322; *Carvajal-Munoz v. INS,* 743 F.2d 562, 575 (7th Cir. 1984). We do not need to determine the precise meaning of "well-founded fear" here, however, because Sagermark's claim would fail even under the most lenient definition of "well-founded fear."

(b) Standard of Review

We review the record to determine whether the BIA's and IJ's conclusion that Sagermark failed to establish a "clear probability" of persecution to support withholding of deportation is sup-

ported by substantial evidence. *See Chavez v. INS,* 723 F.2d at 1432; *McMullen v. INS,* 658 F.2d at 1316. The proper standard of review for determinations of "refugee" status for purposes of the *discretionary asylum* provision is somewhat more complicated. We held in *McMullen* that "substantial evidence" review was appropriate because §1253 (h) requires the BIA to withhold deportation if the alien is determined to be subject to persecution, the BIA having no absolute discretion in deciding the issue of persecution. While it is true that the granting of asylum to those determined to be refugees is discretionary, the determination of refugee status is not.[1] Thus, the logic of *McMullen* suggests that this court must review the conclusion that Sagermark is not a refugee for purposes of discretionary asylum under the substantial evidence standard. *See Bolanos-Hernandez,* 749 F.2d at 1321 n.9; *Carvajal-Munoz,* 743 F.2d at 567. Assuming an asylum applicant is found to be a refugee, this Court would then review the INS's decision to grant or deny asylum for abuse of discretion. *See Bolanos-Hernandez,* 749 F.2d at 1321 n.9; *Carvajal-Munoz,* 743 F.2d at 567-68.

(c) Application

While it is unclear what meaning the IJ or BIA gave to the term "well-founded fear," the record contains substantial evidence to support the conclusion that there is no basis in fact for any fear that Sagermark would be subject to persecution, much less a "clear probability" of its actually occurring. The burden is on Sagermark to prove the requisite possibility of persecution. *See Bolanos-Hernandez,* 749 F.2d at 1320 & n.5; *Shoaee v. INS,* 704 F.2d 1079, 1084 (9th Cir. 1983). He has failed to meet that burden here because his testimony consisted primarily of mere assertations of his fear without evidence that his fear has a basis in fact. *See Shoaee,* 704 F.2d at 1084.

[1]Indeed, if the alien is determined not to be a "refugee," then the BIA has no discretion and may not grant asylum. *See* 8 C.F.R. 208.8(f) (1) (i).

Much of his testimony consisted of complaints about his conviction for "disloyalty to principal" and alleged conspiratorial attempts by the Swedish government to block his appeals. Even if one makes the generous assumption that the modicum of evidence produced by Sagermark is sufficient to support his claim of conspiracy, the alleged conduct is not "persecution," which this court has defined as "the infliction of suffering or harm upon those who differ...in a way regarded as offensive." *Kovac v. INS*, 407 F.2d 102, 107 (9th Cir. 1969). Not only did Sagermark succeed on appeal in getting his conviction reduced to a lesser offense, but he was neither fined nor jailed for his conviction. And, because his engineering license was not even revoked, he has no plausible claim that the conspiracy caused him "substantial economic disadvantage." 407 F.2d at 107.

Sagermark's claim that he will be unjustly confined to a mental institution if he returns to Sweden is not supported by any convincing evidence. He has presented no proof that the Swedish government has ever institutionalized dissidents. His own evidence indicates that he cannot be involuntarily committed without the benefit of an impartial examination, and he has the right to appeal an adverse decision with the aid of counsel. He has failed to provide even marginally probative evidence to suggest that he would not be afforded the benefit of those procedures or that the Swedish government has any interest in institutionalizing him in the first place.

Sagermark also argues that the Swedish government enacted a public official immunity law in response to his lawsuits against various Swedish officials he believed were conspiring against him. He has not provided adequate evidentiary support for this theory nor would the truth of such an allegation establish persecution given that his suits were dismissed prior to the enactment of the immunity law.

Finally, Sagermark has never been prosecuted for his outspoken anti-government efforts, and he does not expect to be jailed if he returns to Sweden. In sum, there is substantial evidence to support the conclusion that Sagermark has no well-founded fear of persecution in Sweden, and thus the INS's deci-

sion to deny his request for asylum and withholding of deportation must be affirmed.

Motion to Reopen or Reconsider

This court will only reverse the BIA's decision to deny Sagermark's petition to reopen or reconsider if it finds an abuse of discretion. *See Chavez v. INS,* 723 F.2d 1431, 1433 (9th Cir. 1984); *Chudshevid v. INS,* 641 F.2d 780, 784 (9th Cir. 1981). This circuit has held that if the petitioner presents a *prima facie* case of entitlement to asylum, it is an abuse of discretion for the BIA to refuse to reopen the proceedings. *Samimi v. INS,* 714 F.2d 992, 995 (9th Cir. 1983). However, Sagermark's motion does not state any new facts not already considered above nor is it supported by any satisfactory evidentiary material. Consequently, Sagermark failed to present a *prima facie* case of entitlement. *See* 8 C.F.R. §103.5 (A motion to reopen "shall state the new facts to be proved...and shall be supported by affidavits or other evidentiary material.").

Moreover, the BIA and IJ were justified in their view that Sagermark was given a full and fair opportunity to present evidence at the hearing. Sagermark's hearing lasted about six hours and when he was told that he would have to finish in fifteen minutes, he indicated that he could complete his testimony in the allotted time. If Sagermark's letter is instead deemed a motion for reconsideration, it is equally unsatisfactory as it gives absolutely no reasons or arguments as to why the IJ's decision on the merits was incorrect. *See* 8 C.F.R. §103.5. The INS's denial of the motion was well within its discretion.

Miscellaneous Claims

Sagermark contends that the IJ's failure to provide him with a copy of the IJ's June 19th oral decision until some 14½ months after he requested it denied him due process. Under 8 C.F.R. §242.19 (b), "*[a]* typewritten copy of the oral decision shall be furnished at the request of the respondent...." While a 14½ month delay does seem somewhat unreasonable, the regulations do not prescribe a time limit for compliance with such requests.

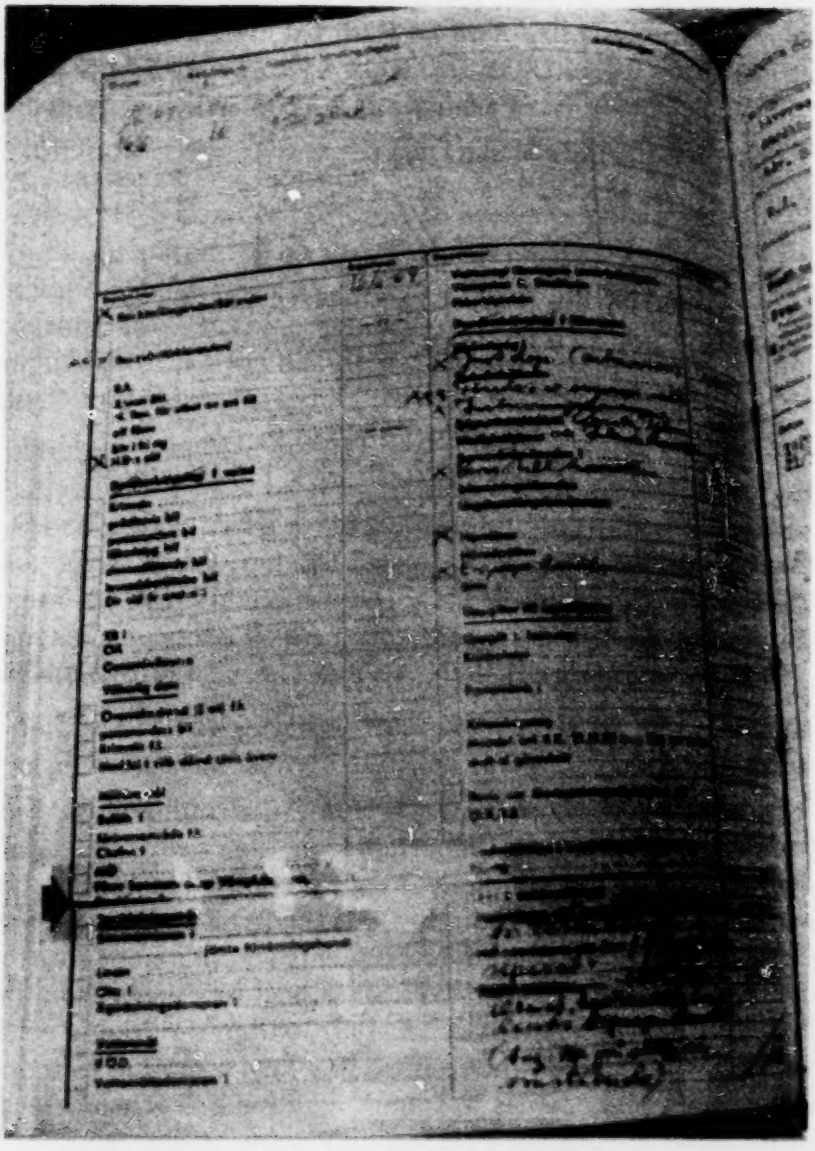
More importantly, however, the IJ gave Sagermark one month after receipt of the copy to file his brief and then extended the deadline another month when Sagermark requested more time due to a death in the family. Finally, Sagermark did not claim nor prove that the delay prejudiced him in any respect. Thus, although the delay was substantial, it did not amount to a due process violation.

Sagermark's due process attack on the fairness of the hearing he was granted must also fail. Like the BIA and IJ, we feel that a six-hour hearing and the introduction of some 62 exhibits, Sagermark's own statement that he could finish his testimony in the additional fifteen minutes allotted, and his failure to explain how granting him further time would strengthen his claim indicate that he had a "reasonable" opportunity to present his case, as required by 8 U.S.C. §1252 (b) (3), and that the hearing met "the essential standard of fairness under the Due Process Clause." *Landon v. Plasencia,* 459 U.S. 21, 35 (1982).

Sagermark contends that the BIA could not adequately review the IJ's decision because the transcript it examined was an altered version of the IJ's original oral decision. However, our review of the two documents indicates that the altered version is simply the original decision edited for style and clarity with no differences of substance.

Finally, Sagermark's numerous other objections are either frivolous or irrelevant. We affirm the decision of the BIA upholding both the IJ's denial of the motion and his June 19th decision on the merits rejecting Sagermark's petition for asylum and withholding of deportation. The Petition for Review is DENIED.

APPENDIX AA



Forgery, diary of the Swedish Supreme Court

Cf. page 21:***this piece of the page of the diary was cut away and in its place another piece of paper was taped in. In this way, another piece of evidence regarding the handling of the Sagermark case disappeared.

BEST AVAILABLE COPY

APPENDIX B

UNITED STATES DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS
Washington, D.C. 20530

Files: A 20 278 423 — San Diego
A 22 435 152

March 31, 1983

In re: JOHAN BERTIL SAGERMARK
FRANCISCA WALTERS-MAZARIEGOS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Pro se
ON BEHALF OF SERVICE: Patrick T. McDermott
Chief Legal Officer

CHARGE:

Order: Sec. 241(a)(2), I&N ACT (8 U.S.C. 1251(a)(2))—

APPLICATION: Motion to reopen

In a decision dated June 19, 1981, the immigration judge found the respondents deportable on their own admissions, denied the male respondent's applications for asylum and withholding of deportation in which the female respondent was included, and granted both respondents voluntary departure on or before September 19, 1981. No appeal was taken from that decision. However, on June 25, 1981, within the 10-day period for taking an appeal, the respondents filed a motion to reopen deportation proceedings to submit additional evidence relevant to the male respondent's persecution claim. In a decision dated August 3, 1981, the immigration judge denied the motion. The respondents have appealed. The appeal will be dismissed.

The respondents admit that no appeal was taken from the immigration judge's decision of June 19, 1981, and that a motion to reopen was filed. The immigration judge therefore properly addressed the respondents' motion, the denial of which is now before us on appeal.

In a thorough and well-reasoned decision on June 19, 1981, the immigration judge found that the male respondent failed to establish that he had been persecuted or had a well-founded fear of persecution in Sweden on account of his race, religion, nationality, membership in a particular social group, or political opinion. The respondents sought to reopen proceedings following issuance of that decision, arguing that the male respondent was not given a fair opportunity to present his claim and that he should be permitted to submit additional evidence. The immigration judge rejected these arguments, noting that no such evidence had been presented or identified and that the respondents' hearing had been a lengthy one involving the submission of numerous exhibits by the male respondent.

We have reviewed the record and conclude that the immigration judge's denial of reopening was appropriate. The male respondent was given a fair opportunity but failed to establish that he has a well-founded fear of persecution within the meaning of the Act. He has submitted no new evidence which would warrant reopening of the proceedings. Accordingly, the appeal will be dismissed.

In view of the fact that the respondents filed a motion to reopen within the period permitted for filing an appeal, voluntary departure will be reinstated. The respondents' request for oral argument is denied.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondents are permitted to depart from the United States voluntarily within such time and under such conditions as may be set by the District Director; and in the event of failure so to depart, the respondents shall be deported as provided in the immigration judge's order.

Chairman

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

No. 83-7426

I&NS #A20-278-423
Southern California
Filed November 21, 1985

ORDER

BERTIL SAGERMARK, FRANCISCA WALTERS MAZARIEGOS, *Petitioner*

v.

IMMIGRATION and NATURALIZATION SERVICE, *Respondent*

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has voted to grant rehearing en banc. Fed.R. App.P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX D

PETITION FOR REHEARING IN BANC

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

Pursuant to the provisions of Rules 35 and 40 of the Federal Rules of Appellate Procedure, petitioner in the above-entitled case respectfully prays the Court to grant rehearing in banc of his petition for judicial review of an order by the Immigration and Naturalization Service which petition was denied on August 1, 1985.

INTRODUCTORY STATEMENT

The facts in this case have been totally overlooked or misapprehended by the Court. Operative facts of the greatest moment have not even been considered in the Court's opinion. These material errors are not only abundant: Such most dramatic sets of facts as the cover-up exercise by the Swedish government of exclusive criminal jurisdiction on Spanish soil with regard to **strictly civil law acts** which in their entirety had taken place within the territorial boundaries of the politically independent State of Spain have been systematically excluded in the Court's opinion.

The Court has erred in not considering such blatantly wrongful and glaringly unlawful action by the Swedish government as to attempt **REVERSE** purported EXTRADITION, that is, de facto ABDUCTION, of petitioner from his then permanent residence and place of his business enterprise in the Spanish capital of Madrid, ostensibly to be tried in the local court of his then former joint venture partner's in Spain Swedish home town of Vaesteras.

This Court has failed by not taking judicial notice of the fact that, as the alleged crime allegedly had been committed "in Spain" and as petitioner remained there without having any reason to flee to Sweden, the Spanish courts would have had absolute and exclusive jurisdiction—if it only would have been possible to persuade a Spanish prosecutor to jeopardize his career

by initiating criminal proceedings in a case where, quite evidently, no law had been violated.

These misrepresentations and omissions, as dealing with matters of jurisdiction and applicability of laws in an international context, are of such pervasive and detrimental nature that they alone have sufficed to predetermine the outcome of the Court's hearing in this case. A glaringly outstanding example of a different kind of grave prejudicial misrepresentation is present already at the very outset of the Court's opinion:

> *"Bertil Sagermark, a Swedish citizen, is a civil engineer who was EMPLOYED by Linden Cranes, a Swedish company, in 1961 to market their cranes in Spain" (capitals supplied).*

Petitioner did not have to read farther to know with absolute certainty that the final words in the Court's 11-page opinion would be "The Petition for Review is DENIED."

Petitioner was never, EVER, in any way **an employee of Linden Cranes.** How this Court has determined an employer/employee relationship between Linden Cranes and petitioner is a total mystery. For no basis therefor exists in the INS record, nor, quite remarkably and even more importantly, in the Swedish prosecutor's information, or, criminal complaint, outside of which framework, as is in the nature of the judicial process, not even Swedish courts are allowed to roam freely. However, it will be shown that they did so in petitioner's case, joining an Ombudsman-directed conspiracy.

The true fact is that the only relationship which existed between Linden Cranes and petitioner was one of PARTNERSHIP. Petitioner was thus an independent entrepreneur. His **sole** connection to Linden Cranes was a contractual agreement in which he entered into a business partnership with Linden Cranes in a joint venture for the marketing of cranes in Spain.

These and a multitude of other grave errors, misrepresentations, and omissions formed the basis on which the Court's opinion was built. The fabrication of the Court's employer/employee situation, mandatory for a prima facie "disloyalty to PRINCIPAL" case, is indeed, defamatory and thus so prejudicial as to have predisposed the Court.

Petitioner is aware that the Court's denial of his petition for judicial review—of the, nevertheless, grossly DEFECTIVE administrative proceedings in regard to his claim to recognition of refugee status—will have the force of law "upon the occurrence of any of three events:

(1) Denial or dismissal of [his] petition for writ of certiorari;

(2) A final decision by the Supreme Court affirming the order of this Court;

(3) Failure of [petitioner] to timely file his petition for writ of certiorari,"

as respondent, the Immigration and Naturalization Service, expresses it.

However, petitioner must believe that the Court will realize on what grave errors its opinion was based and, accordingly, grant rehearing in banc, if for no other purpose at least in order to eliminate the unprecedented affront to generally recognized principles of international law, as well as to the internationally recognized minimum standard of justice, which the Court's opinion would constitute if it had been based on facts that had been reported fairly and accurately. To do otherwise than to vacate the Court's opinion as stated would, namely, be to inflict incalculable and irreparable harm upon the Court itself, particularly in view of the intended publication of the opinion in the Federal Reporter. For the **stare decisis** effect of the Court's opinion will, indeed, melt faster than butter in the Sahara sun once the true facts are revealed.

The merits of petitioner's claim to refugee status should thus not be allowed to remain buried under the judicial avalanche of factual misrepresentations and omissions which the Court's opinion amounts to. Had the facts been presented fairly and accurately, one must ask, if only rhetorically, if the final words in the Court's opinion would not have been "The Petition for Review is

GRANTED."

Petitioner's position is the one adopted by Lasky (19 Sw. L.J.679,689):

> "An opinion writer is entitled to the greatest leeway in his law as in his reasoning, for they are his. But honesty allows no leeway in his statement of the facts, for they are not his. There is no substitute whatever for adherence to the exact and precise record in the case. No 'result-orientation' can justify omission of a single relevant fact or the inclusion of a single factual statement that is false.***
>
> Then there is an allied sin: the sin of going outside the record for facts that may or may not be so.***Roaming outside the record to make assertions of fact which are subject to serious dispute and which the appellate process furnishes no adequate procedure for trying***[is] inexcusable."

THE "FACTS": ERRORS, OMISSIONS, AND MISREPRESENTATIONS

1. This Court states erroneously:

> *"Bertil Sagermark, a Swedish citizen, is a civil engineer who was EMPLOYED by Linden Cranes, a Swedish company, in 1961 to market their cranes in Spain." (capitals supplied)*

Nature of error:

Petitioner was never, EVER, in any way an employee of Linden Cranes as has been explained in the Introductory Statement.

Relevance of error:

The existence of an employer/employee relationship between Linden Cranes and petitioner was a MINIMUM, although not at all sufficient, prerequisite for a prima facie case to be filed on a charge of "disloyalty to principal".

There is, however, nothing in the INS record that can be used to support the Court's independent finding about the existence of even the most remote employer/employee relationship. Introductory Statement.

As petitioner, having recovered from the stunning revelation in the Court's opinion that he was an employee of Linden Cranes, without ever having been paid even a penny's worth of salary,

commission, or wage, wants to maintain his until now never-failing trust in the integrity of the Federal Judiciary, he must conclude that the Court, inadvertently, has fallen into the trap of reasoning in a backward circle as follows:

> As petitioner had been charged with and ultimately convicted of "disloyalty to principal", however WRONGFULLY, there must have existed a **principal** and thus an employment relationship. It was then, naturally, because of disloyalty to this, nevertheless, FICTITIOUS employer **principal** that petitioner had been charged with and convicted of "disloyalty to principal".

Furthermore:

An ordinary employment situation would, however, not have been enough. The statutory definition of the Swedish crime of "disloyalty to principal" requires, as a mandatory element, that the employee be **not only an employee**, but also be in such a **"position of trust"** that he can act, with binding effect, on behalf of the employer principal, normally a corporation which only can do business through such physical persons as an Officer, or Director, having in common that they are "in a position of trust". See The Swedish Statute, infra. Compare also Marsh's California Corporation Law, Chapter X, Fiduciary Duties of***Directors, Officers***

Petitioner was, to the best of his knowledge, not the Chairman of the Board of Directors of Linden Cranes. And he has no recollection of ever having been the Executive Vice President or General Manager of the company. Not even a regular Officer or Director.

How could he then have been convicted of "disloyalty to principal"? It is all very simple. In Sweden, whenever the State itself has a strong interest in a conflict, there is no other requirement for a conviction of the opposite party than that criminal charges be filed. The public prosecutor does not even have to present a prima facie case. The Court can see that for itself in Exhibit 23, INS Administrative Record (A.R.) 391-395, Decree of Temporary Prison, that is, bench warrant, which contains the prosecutor's information/criminal complaint in full. The Court will

be hard pressed to find even a hint of an employment relationship there, much less a "principal". Such mandatory MINIMAL, but **not at all sufficient**, prerequisite for a prima facie case to be filed did not emerge until some 21 years later, namely, on August 1, 1985, when the Court's opinion and decision to deny judicial review of the INS proceedings in petitioner's case was filed: "Bertil Sagermark***was EMPLOYED by Linden Cranes***

The Swedish Statute (attached as Addendum ONE):

> *"If a person who, on account of his POSITION OF TRUST, whether in public or in PRIVATE SERVICE, as MANAGER OR OTHERWISE (petitioner's comment: as Chairman of the Board of Directors, or in a similar position, according to the legislative travaux preparatoires), has been given the task of handling another's ECONOMIC affair or to exercise supervision over its management, misuses his AUTHORITY TO REPRESENT HIS PRINCIPAL and thereby CAUSES A LOSS to his PRINCIPAL, he shall***be sentenced for disloyalty to principal to pay a fine or to imprisonment for at most two years.*
>
> *If the crime is grave, imprisonment for at least six months and at most six years shall be imposed. In judging the gravity of the crime, speciul attention shall be paid to whether the offender had used a false document or misleading bookkeeping or had caused his principal a substantial or keenly felt loss.*
>
> *If a person, who has been given the handling of another's legal affair, misuses his position of trust to the disadvantage of his principal, he shall be sentenced as stated in Section 1 even though the affair is NOT of an ECONOMIC nature." (capitals supplied)*

Final comments:

Although the last paragraph is applicable only on attorneys-at law and similarly situated persons, it is indirectly applicable, as well as self-explanatory, in regard to petitioner's Swedish case as involving the marketing and manufacturing of cranes in Spain and not at all an "**economic** affair", or an "affair***of an **economic** nature".

Having proven the null-and-void character of petitioner's conviction, already from the limited perspective of this Court's false statement about petitioner as having been "**employed** by Linden Cranes", petitioner has no reason to further overstate his case by showing the non-presentation of each one and every one of the

other multiple statutory elements which were mandatory already for the filing of a prima facie case of "disloyalty to principal".

The Court ought, however, to take an **ex officio** look at the Swedish prosecutor's information/criminal complaint, Exhibit 23, A.R. 391-395, and, after having compared it with the relevant Swedish statute, Addendum ONE, ask the following questions:

(a) Where is the prima facie case?

(b) Where was petitioner's "position of trust"?

(c) Where was the "private service" situation?

(d) Where was the "economic affair"?

(e) Where was petitioner's "authority to represent his principal"?

(f) How did petitioner "cause[] a loss to his principal?

And most importantly:

(g) What "principal"? Or, where is the "principal"?

Or, to put it in a wholly different way:

(h) **"Where is the beef?"** Yes. "Where is **the beef?**"

2. **This Court states misleadingly:**

> ***"Sagermark eventually MODIFIED the designs and attempted to market them independently."*** *(capitals supplied)*

Nature of error:

When read **out of context**, the Court's statement "Sagermark eventually **modified the designs**" is absolutely true. Read **within** context, however, the Court's statement is so misleading as to be totally untrue:

> "Bertil Sagermark***was employed by Linden Cranes***to market their cranes in Spain. Sagermark eventually modified the designs and attempted to market them independently. When Linden [Cranes] found out about Sagermark's actions, it brought charges against Sagermark, first for embezzlement, and later for grave disloyalty to principal, both crimes under Swedish law."

Relevance of error:

The Court's statement constitutes a surreptitious assault on petitioner's honor as a professional and thus tends to undermine his credibility in relation to his claim to recognition of refugee status. To sum it all up, the Court's misrepresentation—that is exactly what it is—is so subtly defamatory that it amounts to denial of due process.

Furthermore:

It became, however, necessary for petitioner and his staff of technicians—who were employed and salaried by him and who worked out of his office in Edificio Espana, Madrid—to engineer the cranes, at petitioner's considerable expense in time and money, to conform to Spanish standards and specifications.

These "modified" cranes were, accordingly, and with the express approval of Linden Cranes, to be marketed in Spain as "SAGERMARK CRANES, System Linden", as indicated in attached photos, Addenda TWO and THREE, from an October 1962 construction exhibition in Madrid. See also Exhibit 38, A.R. 434-443, which, for easier accessibility, is attached as Addendum FOUR, and in which the Court easily could have learned the true facts from Mr. Luis Rios Sidro, as the Managing Director of Ferrovias y Siderurgia, S.A., Madrid, hereinafter called FERROVIAS, as regards the Court's allegation that petitioner "attempted to market [the designs] independently."

3. This Court states misleadingly:

> ***"Sagermark eventually modified the designs and attempted to market them independently."***

Nature of error:

"Sagermark [NEVER] attempted to market [the designs] independently." This is a gross oversimplification of a series of utterly complicated events driven so far as to amount to another outright fabrication of defamatory and, therefore, thoroughly prejudicial nature. Exhibit 38, A.R. 434-443, attached here as Addendum FOUR, where FERROVIAS, the Spanish license manufacturing partner in what constituted a tripartite agreement

with Linden Cranes and petitioner as the other two parties, states:

> "In 1961***Mr. SAGERMARK contacted us, trying to establish a contract for fabrication of cranes under license. These cranes were of type LINDEN, and he, as he told us, was authorized to these negotiations in virtue of his agreements with LINDEN-CRANES.***
>
> In April 1962 Mr. SAGERMARK communicated with us again***
>
> ***a contract [was signed] on the 29th May 1962, in Madrid.
>
> We have to explain that Mr. SAGERMARK indicated always that he was acting in virtue of his agreements with the LINDEN-CRANES before whom, he assumed to have all responsibility, above all, relative to the payment of the corresponding canon and the rights on the plans and drawings which he facilitated us."

Relevance of error:

The untrue and defamatory nature of the Court's misrepresentation that "Sagermark***attempted to market [the designs] independently" constitutes a denial of due process, particularly because it predisposed the Court to opiniate and rule the way it did, denying judicial review of the INS administrative proceedings in petitioner's case.

4. **This Court states falsely:**

> "When Linden [Cranes] found out about Sagermark's actions, it brought charges against Sagermark, first for embezzlement, and later for grave disloyalty to principal."

Nature of errors:

The Court's statement is FALSE in multiple respects:

(a) "When Linden [Cranes] **found out** about Sagermark's actions," is a misstatement of particularly insidious nature: Linden Cranes "found out about Sagermark's actions" when they, in September 1962, were invited to Madrid by petitioner, in order to establish a final agreement with FERROVIAS for the manufacturing under license of cranes in Spain. See Exhibit 38, A.R. 434-443, attached hereto as ADDENDUM FOUR:

> "Early in October 1962 Mr. LINDEN and Mr. TORGNY, General Director and the respective assistant managing director of LINDEN-

CRANES, arrived at Madrid and we carried on with them several conversations and had a lunch in the Hotel Felipe II in El Escorial on October 3rd. At all meetings were present Mr. SAGERMARK***

We informed the gentlemen of the LINDENCRANES about the situation of the fabrication of the cranes and about our purpose of installing at the Exposition in Madrid, which was about to be inaugurated, the first of them which was being tested in our workshops and was expected by us from day to day.

They expressed their satisfaction and congratulated us on the great effort which we had made in obtaining the fabrication of the three cranes within four months***

It was agreed that later on they return to Spain in order to ultimate the business in some of its details and we would send somebody to Sweden in order to study the technic of fabricating the cranes, problems of quality, etc. to all intents and purposes.

Their behaviour and relations with Mr. SAGERMARK were excellent and they demonstrated by actions and words their satisfaction and their hope that the fabrication of the cranes LINDEN in Spain will reach a great development."

(b) "When Linden [Cranes] found out (sic: "found out") about Sagermark's actions," it **did not** "bring charges against Sagermark." See Exhibit 38, A.R.434-443, Addendum FOUR; on the contrary:

> "To all appearance the relations between LINDENCRANES-FERROVIAS-SAGERMARK were completely satisfactory and without any doubt and objection on part of the Swedish Company, being evident that Mr. LINDEN and Mr. TORGNY did not make, during their visit, any observation about the contract, which they knew already, neither about the fabricated cranes, nor about other details of which we could have deduced their least disagreement with all actuations until that date. In these circumstances it was inavoidable to cherish the completest security about the solid and straight collaboration between all parties, with interest in the fabrication and sale of the cranes, subject of the contract, and in their agreement with all terms of the same."

(c) It is not true that "[w]hen Linden [Cranes] found out about Sagermark's actions, it brought charges against Sagermark, **first for embezzlement.**" A.R. 294.

This misstatement is an almost verbatim quote from the Immigration Judge's June 19, 1981 decision denying petitioner's claim to refugee status. A.R. 62.

It is sufficient to take a look at the statutory definition of "embezzlement" to realize that there was something fishy about such "charge". Addendum ONE:

> "If a person, who, owing to a contract or to public or private service or a similar situation, has gained possession of property on behalf of another and with the obligation to deliver or account for it, by appropriating the property or otherwise disregarding what he has to comply with in order to be able to fulfill his duty, he shall, if the act results in gain for him and loss to the owner, be sentenced for **embezzlement** to imprisonment for at most two years."

For what did "embezzlement" have to do with "market[ing] of cranes in Spain?" The limited space allotted for this petition does not allow a detailed explanation of what kind of fishing expedition that Linden Cranes had embarked upon together with its Swedish home town prosecutor. The record contains ample information as to the fishing-trip rationale for the embezzlement "charge" which the Court evidently has overlooked.

The Court's misstatement is due to the circumstance that neither the IJ, nor the INS trial attorney, had done their homework. The record shows that they did not have a iota of knowledge about petitioner's case against Sweden, nor any understanding of what it was all about. Petitioner was therefore unable to answer their questioning in such a way as to advance the case. That is, without adding to an already total confusion by replying correctly to questions which had been fetched from such frames, as regards time and place, where they did not at all belong.

The embezzlement "charge" was used briefly after petitioner had been tricked to travel to Vaesteras from New York City at the end of November 1962, ostensibly to sign a final agreement with Linden Cranes, but, as was to prove to be the case, to be exposed to an extortion attempt. He was thus forced to choose between (1) handing over his rights in relation to the manufacturing-under-license agreement with FERROVIAS, or (2) being detained by order of the Vaesteras public prosecutor.

It was because the prosecutor did not have the slightest idea about the nature of the relationship between Linden Cranes, FERROVIAS, and petitioner that he suggested that it might be suitable to charge petitioner with "embezzlement" in order to justify

(1) the "fishing expedition" search warrant he was to issue himself; and

(2) petitioner's detention, later semi-detention, while Linden Cranes would be given the opportunity to visit Madrid in petitioner's absence in order to try to persuade FERROVIAS to sell out petitioner in exchange for financial favors. It is all there in the record. For instance, in Exhibit 32, A.R. 426-427. As this Court may have overlooked this document, it is quoted, in part, as follows:

> "As consequence of this lack of validity of the contract, signed by FERROVIAS on May 29th, 1962, Mr. TORGNY suggested that also FERROVIAS should consider the same as null and void and that it should be replaced by another direct agreement between [LINDEN CRANES] and FERROVIAS, **eliminating completely the function of Mr. SAGERMARK in his task as a connecting link between both Companies**, which function is not pleasant to [LINDEN CRANES] and which they consider neither convenient nor necessary.***
>
> ****Mr. TORGNY insists on the solution of establishing a direct agreement between FERROVIAS and [LINDEN CRANES] without any intervenience of Mr. SAGERMARK.*"

Mr. Linden was later to state in open court that the embezzlement" charge" had had to be used "because this was the only way in which we could keep Sagermark detained while we went to Madrid to obtain a direct agreement with FERROVIAS."

(d) It is false that "[w]hen Linden [Cranes] found out about Sagermark's actions, it brought charges against Sagermark [for] grave disloyalty to principal." Exhibit 38, A.R. 434-443, attached hereto as Addendum FOUR.

Relevance or errors:

In order to explain as briefly as possible the relevance of

the multiple errors just listed, it may be preferable to restate the sentence in full:

> *"When Linden (Cranes] found out about Sagermark's actions, it brought charges against Sagermark, first for embezzlement, and later for grave disloyalty to principal, both crimes under Swedish law."*

"[B]oth crimes under Swedish law." **Sic**..."under Swedish law"... but what did supposed "Swedish law" have to do with an alleged crime committed "in Spain"? When the alleged offender was still there because he had no reason to flee to Sweden. Simply because he had not committed any crime at all. Because no crime had been committed.

By overlooking, or misapprehending the facts—because of the defective nature of the INS record—and, thereafter, applying the law faithfully on such misstated "facts", this Court denied petitioner his constitutional rights to due process.

Furthermore:

The Court failed to take judicial notice of the fact that, when Linden Cranes "found out about Sagermark's actions," it **did NOT** bring "charges against Sagermark," before the Spanish **forum delicti** which would have had absolute and exclusive jurisdiction over petitioner's alleged "crimes under Swedish law" if it only could have been alleged that such "crimes" had been committed, but **dined and wined,** represented by its President and Chairman of the Board of Directors, Mr. Elis Linden, **in absolute harmony with "Sagermark"**, moreover, **next door to the main police station in Madrid.** Addendum FIVE which is a page 29 extract from one of petitioner's documentary books in Swedish.

The Court also failed to take judicial notice of the circumstance that it was totally irrelevant whether "embezzlement, and***grave disloyalty to principal, both [were] crimes under Swedish law," as well as whether "Sagermark's actions" constituted "crimes under Swedish law," or not. For all events had, unquestionably, taken place "in Spain", and petitioner had in no way, EVER, fled to Sweden in order to avoid being tried in a

Spanish court, but remained, protected by Spanish law and order, in his residence and office in the Spanish capital of Madrid.

This Court erred particularly by not taking judicial notice of the fact which has been proven so thoroughly [in] this petition for rehearing in banc that, although "embezzlement, and***grave disloyalty to principal, [irrefutably] both [were] crimes under Swedish law," petitioner's actions, in case they had taken place in Sweden, would have been perfectly legal and correct, also "under Swedish law," if it would have been possible to persuade the Swedish courts to comply with the same law.

5. **This Court states misleadingly:**

"Sagermark refused to return to Sweden for trial."

Nature of errors:

The Court's statement is MISLEADING, or FALSE, in three respects:

(a) "Sagermark [did not REFUSE] to return to Sweden for trial." All he did was to exercise his legal right and moral obligation to **ignore** the summons served upon him in June 1964 in his residence and office in Madrid by the local Swedish Consul General, in blatant disregard for the territorial sovereignty and jurisdictional integrity of the Spanish State.

(b) The statement "Sagermark refused to RETURN to Sweden for trial" is so misleading that it amounts to another insidious misrepresentation. The wrongful use of the word "return" implies not only that petitioner was a fugitive from Swedish justice. It ignores that petitioner's alleged crime allegedly had taken place "in Spain" and that he had his home, legal residence, and outcome in the Spanish capital of Madrid.

(c) The Court's statement that "Sagermark refused to return to Sweden for TRIAL" is an equally deceitful misrepresentation because it implies that the Swedish courts were exercising lawful jurisdiction in regard to "Sagermark's actions".

Relevance of errors:

The Court's misrepresentations constitute concealment of the unlawful exercise by Swedish courts of absolute and exclusive jurisdiction in Spain and, therefore, denial of due process.

6. **This Court states misleadingly:**

"The Swedish government asked for [Sagermark's] extradition."

Nature of error:

"The Swedish government did not attempt to extradite petitioner; what it did was to try to abduct petitioner—under the disguise of an extradition request. And concealing that the place of commission of petitioner's alleged crime was "Spain". See the definition of "extradition" in Black's Law Dictionary, attached hereto as Addendum SIX.

Relevance of error:

The Court's misrepresentation of the true nature of the Swedish government's "extradition" request constitutes a denial of petitioner's constitutional rights to due process.

7. **This Court misleads by omission:**

"Sagermark returned to Sweden in 1967..."

Error:

The Court does not tell the whole truth; as regards the misleading use of the word "returned" see Error 5. (b). The Court has overlooked that threats were used against petitioner to compel him to go to Sweden for "trial". Petitioner was, for instance, informed that his passport would not be renewed unless he submitted to the jurisdiction of the Vaesteras court. A.R. 222: "the Swedish authorities, when they had failed in their extradition attempt, as regards an alleged crime committed in Spain, they used all kinds of threats in order to get me (that is, petitioner) over to Sweden to have the case terminated***they intended to use the fact that my passport was going to expire, to force me out

of Spain, which is part of an abduction conduct."

Relevance of error: By omitting the fact that threats were used to force petitioner to submit to Swedish jurisdiction, the Court denied petitioner due process.

Fifteen pages is by far too little space to deal with all the errors, omissions, and misrepresentations on which the Court's opinion was built. Running out of space, petitioner must limit himself to list subsequent errors, omissions, and misrepresentations as follows:

8. This Court states misleadingly:

> "Sagermark*** was tried and convicted of grave disloyalty to principal. On appeal, the charge was reduced and Sagermark was neither fined nor jailed. His engineering license was not revoked.
>
> Sagermark took his case to the Swedish Supreme Court five times without success. He also complained to the Parliamentary Ombudsman for Justice about alleged mishandling of his case. After the Ombudsman took no action, Sagermark sued the judges, prosecutors, and other governmental officials involved in his case, but the suits were dismissed for various reasons. Sometime thereafter, the Swedish Parliament granted immunity from suit to public officials acting in their official capacities."

Errors: They are, indeed, so multiple and of such insidious nature that they cannot be dealt with satisfactorily on less than, let us say, approximately twenty pages more.

Relevance of errors: Denial of petitioner's constitutional rights to due process.

ENDING ARGUMENT

The appellate process does not provide an appropriate vehicle to deal with such a multitude of factual errors, omissions, and misrepresentations as those which this Court's opinion is built upon. This case should, therefore, be remanded to respondent in order to correct the record. **Hetzer** v. **INS,** 420 F .2d 357 (9th Cir. 1970).

The argument that petitioner "has presented no proof that the Swedish government has ever institutionalized dissidents" is incorrect. Exhibit 28, A.R. 421: "When the old King died in 1950***Haijby was***sent to an asylum for observation." A.R. 85-87.

The Court states further that petitioner "has not provided adequate evidentiary support for his theory" that "the Swedish government enacted a public official immunity law in response to his lawsuits against various Swedish officials..."

Petitioner could have presented "proof that the Swedish government has***institutionalized dissidents" and that "the Swedish government enacted a public official immunity law in response to his lawsuits against various Swedish officials..." if the IJ had not prevented him from presenting oral testimony from Sweden and New York/Boston. Addendum SEVEN which was attached to Brief for Petitioner. Addendum EIGHT consisting of pages 2-4 in the same brief, in particular, Issues B.4. and B.5.

The Court's statement that "nor would the truth of [petitioner's] allegation [as to the "public official immunity law"] establish persecution given that his suits were dismissed prior to the enactment of the immunity law" must be interpreted to mean that **petitioner has "establish[ed] persecution"**. For **his suits were dismissed on such unlawful grounds which subsequently were legalized by way of the "public official immunity law"**.

CONCLUSION

For these and other reasons, and for good cause, the Court's opinion should be vacated.

Respectfully submitted,

Escondido, California
September, 5, 1985

Bertil Sagermark

APPENDIX E

Extract from Administrative Record,
pages 261 to 273:

SAGERMARK: I was eating lunch with one of the top officials at Linden Cranes when the police came to the hotel to fetch me [for questioning]. That was after I had refused to take the telephone call [at the] Linden Cranes [office], to Ferrovias [in Madrid], and I had walked out of their office. I was brought to the police station.

IMMIGRATION JUDGE: That was in Spain?

SAGERMARK: That was in Sweden, Vaesteras.

IMMIGRATION JUDGE: In Sweden, all right.

SAGERMARK: On the 22nd of November, yes, 1962.

****

SAGERMARK:***[T]he telephone call had gone through [to] Ferrovias and a lot of confusion had arisen. Ferrovias had evidence and did not want to play along. I was sitting together with the top criminal police officer in Vaesteras, and he said to me:"***I don't want my Police Department to be involved in extortion. You have to do something in order to resolve this." "What can I do?" I said. "Why don't you call your friends?" "Do you really mean that while I'm detained, I am allowed to call my friends in Spain?" "No, but you must have friends in Stockholm, why don't you call them?" So, I was allowed to call long distance on the police telephone and send a telegram to Madrid. That is why this telegram is very important, because I have the date, the hour, and it shows then that the police was in collusion with me in order to inform Ferrovias in Spain that the whole intention about this was to try to keep me detained in Sweden while [Linden Cranes] went on their own to Spain in order to make an agreement in my absence.

IMMIGRATION JUDGE: You say the police were in collusion with you?

SAGERMARK: Yes, in order to counteract the activity of the

prosecutor.

IMMIGRATION JUDGE: You mean that the police had entered into some type of a secret agreement with Linden Cranes to keep you in jail so that they could go to Spain?

SAGERMARK: The prosecutor had entered into an agreement, yes.

IMMIGRATION JUDGE: All right.

SAGERMARK: But the police was not at all in agreement.

IMMIGRATION JUDGE: How long were you kept in detention by the police in Sweden?

SAGERMARK: 23 hours and 50 minutes, because if it passes 24 hours, then different rules apply, and the prosecutor was anxious not to let it pass the 24 hours. Then I was deprived of my passport, which had already been handed over by Torgny [the deputy managing director of Linden Cranes with whom Sagermark had traveled from New York City], and I was forbidden to leave [Vaesteras].—One has to understand the function of a Swedish court. The concept of acquittal does not exist in Sweden. Indictment is always conclusive proof of guilt. I do not know of a single case in Sweden which has ended in an acquittal. The only function of the court is to rubberstamp the prosecutor's indictment into a conviction.

IMMIGRATION JUDGE: How do you know that?

SAGERMARK: I can show it statistically, and I can refer to what Roland Huntford says in *The New Totalitarians* (A.R. 501 to 510).

IMMIGRATION JUDGE: Who?

SAGERMARK: Roland Huntford, the former correspondent for Scandinavia of THE very much respected London OBSERVER.

IMMIGRATION JUDGE: Is he an expert in Swedish law?

SAGERMARK: He is a journalist. Journalists are very often very clever persons, and you don't become.....(Here, Sagermark was interrupted by the IJ and thus prevented from continuing:

"you don't become the correspondent for Scandinavia of such a prominent newspaper as THE OBSERVER without being extremely qualified as a journalist.")

IMMIGRATION JUDGE: Is he an expert? Is he a student and an expert on the Swedish law?

SAGERMARK Your honor, I don't....

IMMIGRATION JUDGE: You see, what bothers me about this is that you make a statement like that. Now, I don't know anything about Sweden. I don't have any connection with Sweden. You make a statement where you say that there are no acquittals, that the indictment is proof of your guilt. I want to see what evidence you've got to show me that that is true other than that being your personal opinion. What evidence do you have to show that?

SAGERMARK: I think there is a quote which I can use in Roland Huntford's statement, in his article on "Judiciary and Ombudsman".

IMMIGRATION JUDGE: What is that quote?—What is that fellow's name again?

SAGERMARK: Roland Huntford. Then, naturally, he prejudges, from the point of view that he is an Englishman, and he, like Americans, is used to due process of law. If he had been a Russian, he may not have been as scared as he was as an Englishman.

****

IMMIGRATION JUDGE: That is *Exhibit 44.* Roland Huntford. It says here he was a Scandinavian correspondent for THE OBSERVER, lived in Stockholm for many years. Where in this article does he establish that what you say is true about the criminal justice system?

****

SAGERMARK (perusing document): "That the government regards the judiciary as a political instrument has been periodically suggested***and in the Swedish mind, then, the judiciary takes its place alongside ministries and other institutions as an agent of

the State. Justice is not associated with the courts. It is expected, instead, from the Ombudsman."

****

IMMIGRATION JUDGE: ***all I see is his opinion. Other people may hold contrary opinions. What we're dealing with here is evidence; not opinions, but evidence. What facts can be established to show this? Go ahead and show me what else you want me to look at there.

SAGERMARK: Then, Your Honor, may I add that I think, in my case, by presenting evidence in my case, I will at least prove that in my case the function of the court was exactly what Roland Huntford shows it to be.

SAGERMARK: I was released [but, at the same time, forbidden] to leave Vaesteras and obligated to keep my passport in the custody of the police, which is absolutely unusual. I was ordered to go to the police three times daily, report three times daily, which is practically the same thing as incarceration. Afterwards I have found out the reason why I had to go to the police three times daily. That was in order to make it impossible for me to go to Stockholm (70 miles away) and come back to Vaesteras before I had to go to the police and the court again. In the meantime, Linden had sent a telegram (A.R. 434) to Ferrovias inviting them, not to come to Linden Cranes, but to come to Stockholm to negotiate a collaboration as regards Sagermark and the agreement in Spain without the presence of Sagermark.

(The telegram, A.R. 439 and 549, which was sent to Ferrovias reads as follows:

S GAVE YOU OUR DRAWING AGAINST AGREEMENT AND SWEDISH LAW HAS AGAIN BROKEN AGREEMENT STOP HE WAS UNDER ARREST NOW FREE AGAINST DUTY TO REPORT HIMSELF TO POLICE THREE TIMES A DAY PLEASE COME IMMEDIATELY TO STOCKHOLM NEGOTIATIONS ON COOPERATION CALL YOU MONDAY
LINDENCRANES)

As things worked out, Ferrovias refused to come to Sweden. They refused to negotiate with Linden Cranes without my per-

sonal presence, and they said very clearly that if they did that, they might be held responsible by a Spanish court, because the Spanish courts were not likely to operate the way the Swedish judicial system was working. Gradually, a kind of very strange...It looks like a conspiracy but I'm inclined to believe that the judge just was very old and feeble-minded. He retired soon after. He was the Chief Judge of Vaesteras. It was agreed between Linden Cranes, the court, and the prosecutor that I should be kept in semi-detention in Sweden while Linden Cranes would be allowed to go to Spain in order to try to find evidence to justify my detention. *** It was necessary to provide evidence of wrongdoing. In order to make it possible for them to fabricate such evidence, I would have [to continue] to be detained in order not to be able to impede with the fabrication process. That was the whole thing.***It had been agreed between the prosecutor, the Chief Judge, and Linden Cranes that Linden Cranes ought to be in Madrid before the hearing with Ferrovias' director, by way of Interpol in Paris, took place, so that Ferrovias would be able to give a testimony which would be favorable to the position taken by the prosecutor.

(Cf. Exhibit 46, A.R. 512 to 515, Act of Declaration from Police Department, Madrid, Spain, dated December 12, 1962, which contains Ferrovias' reply to three specific questions presented by Hellekant, the Swedish prosecutor, as forwarded through the Interpol channel. The replies given by Ferrovias turned out to be so favorable to Sagermark that the prosecutor subsequently refused to allow the Interpol document to be used as evidence in court stating that answers to questions which had been given in Madrid were not acceptable in Swedish judicial proceedings. Although the Swedish courts reluctantly admitted the Interpol document when presented by Sagermark, instead of by the prosecutor-questioner, they set the example which was later followed by the U.S. immigration judge, namely, to totally ignore it.

Unfortunately for Linden Cranes and the prosecutor, it didn't work out that way because the hearing [before] Interpol was conducted the day before [Linden Cranes] arrived in Madrid, so that's why the whole plot failed, and, finally, on December 21

[1962] I was allowed by the [Vaesteras] court to return to Spain where I lived and I had my home.***

****

SAGERMARK:***the prosecutor***kept all the documents which he had taken in order to try to find some evidence. I returned to Spain, and nothing happened. Then, every***three months, the prosecutor***asked for the court's permission to retain the documents, and this continued for about a year and a half. Already within a month, about, after I had left for Spain***in the beginning of January [1963], the prosecutor of Vaesteras wrote a letter to the prosecutor of Stockholm saying that he had no jurisdiction—that the court of Vaesteras had no jurisdiction, and he wanted the prosecutor of Stockholm to take over the case. The prosecutor of Stockholm saw immediately that this was a fouled-up case, so he returned all the documents to Vaesteras, but I have a written document [by] the prosecutor where he states very clearly that he had no jurisdiction to deal with the case. Not until one year and a half later was the indictment (criminal complaint) presented to the City Court of Vaesteras, in violation of due process of law and an explicit statute in the Swedish law (Code of Judicial Procedure) which says that no indictment can be returned unless the future defendant has had an opportunity to present his evidence.***[T]he indictment was returned, I think, on May 4 by the City Court of Vaesteras.***On the 12th of June, 1964***a person from the Swedish Consulate General in Madrid came into my office in Spain and handed me the indictment.

****

SAGERMARK: First of all, I did not know at that time that it was in violation of international law and Swedish law***

IMMIGRATION JUDGE: Did you make plans to go back to Sweden to defend yourself?

SAGERMARK: No, sir. I consulted with my Spanish lawyer friends, and they said: "This is absolutely outrageous. It can't be like that.***They must have similar laws [as we have in Spain]," and, moreover, I had noticed that every kind of evidence from Spain had been excluded (for instance, the Interpol questioning of Ferrovias, A.R. 512 to 515), and ***that the elements of

crime***in the statute***, were not in the indictment.

IMMIGRATION JUDGE: What happened now? Did you go back to Sweden to face these charges?

SAGERMARK: No, I did not. No. One year later, on the 10th of June, 1965, one of the employees of the [Swedish] Consulate General [in Madrid] came into my office again, and then I was given this citation to appear in court [in Vaesteras] on September 6th, 1965.

IMMIGRATION JUDGE: Did you go?

SAGERMARK: No. With my experience as to how the things had been done, with my experience that the court was in collusion, I did not go.

IMMIGRATION JUDGE: Then what happened.

SAGERMARK: Well, because I did not appear at the so-called trial, which was set for September 6, 1965, the court issued a [bench] warrant for my arrest.

IMMIGRATION JUDGE: The Spanish authorities arrested you?

SAGERMARK (confounded by the fact that the IJ evidently did not understand that a Spanish executive authority does not execute a bench warrant issued by a Swedish judge): No, the Swedish, the Swedish court.

IMMIGRATION JUDGE: But you were in Spain.

SAGERMARK: Yes, I was in Spain.

IMMIGRATION JUDGE: And were you arrested in Spain?

SAGERMARK: They instituted a [bench] warrant for my arrest***on September 20, 1965, 14 days after the [date which had been set for the trial].***You have it, Your Honor, in the "Decree of Temporary Prison" (*Exhibit 23*, A.R. 391 to 399).

IMMIGRATION JUDGE: And were you taken into custody by Spanish officials?

SAGERMARK (dumbfounded at realizing that the IJ still did not comprehend that "Spanish officials" did not and could not

take anybody "in custody" on the basis of a Swedish bench warrant): Not then, Your Honor. The reason why I have presented you with the decree of temporary prison is that it contains the whole indictment. So, in the decree you have both the [bench] warrant of arrest and the indictment. I did not know at that time that the [Swedish] court had no jurisdiction because I did not understand these legal niceties at that time.***I was informed a few days later***that Sweden was going to seek my extradition. Knowing that everything which comes under a Stockholm dateline is taken at face value, both, which I learned afterward, by the [State Department] Bureau of Human Rights and authorities in a number of countries***I went to my [second] office and apartment in Portugal and made a decision as to where I ought to flee. The first boat happened to go to Israel, so I just went on the boat and went on to Israel.***I had a friend, whom I believed was a friend, an official of the Swedish Embassy [in Tel Aviv].***I told him about my predicament in confidence. I said:"***This is absolutely incredible. It's a bureaucracy which has gone mad, which has completely lost control of itself. Let's try what we can do in order to restore it on the legal roads and bring it back to legality." What he did, instead, every night [after our meetings] he went home and in the morning he had a long conversation with the Swedish Ambassador to Israel, and telegrams were sent back and forth between Israel and Sweden in order to find out what should be done with me.***

****

IMMIGRATION JUDGE: Mr. Sagermark, let me interrupt. I don't see how all of this goes to your question of asylum. What I want to find out now is, did you ever go back and stand trial on this charge?

SAGERMARK: Yes, I left Israel when I found out about this conspiracy.

IMMIGRATION JUDGE: Wait a minute. Answer my question. Did you ever go back and stand trial on the charge?

SAGERMARK: Yes, Your Honor.

IMMIGRATION JUDGE: When? When did you go back?

SAGERMARK (realizing that he was being prevented from presenting most crucial testimony as regards how the Parliamentary Ombudsman for Justice was to intervene in the administration of justice and thus create an absolute judicial deadlock, long before Sagermark was to be forced to present himself for sham trials in Sweden): Your Honor, I must most respectfully insist that I be allowed to, even if only very briefly, to...

IMMIGRATION JUDGE: Just tell me when you went back.

SAGERMARK: I went back in December 1967 when I was threatened with otherwise being forced [thereto] by the cancellation of my passport.

APPENDIX F

"Sagermark's numerous other objections [were neither] frivolous [nor] irrelevant"

Without in any way specifying the nature of what it refers to as "Sagermark's numerous other objections" the court of appeals discards them summarily as "either frivolous or irrelevant," A-9. A few of these objections which Petitioner remains unable to regard otherwise than as highly pertinent as to his claim that he was denied his constitutional right to due process are listed as follows:

WHETHER the Immigration Judge committed reversible error***by not ascertaining the relevant facts of the case***?

WHETHER the Immigration Judge denied Petitioner his constitutional***rights***when he suppressed "evidence; not opinions, but evidence", A.R. 265, by avoiding even to mention, in his decision denying Petitioner's claim to refugee status, the existence of a photo of a page of the bound Swedish Supreme Court diary which***substantiates the charges made, on September 6, 1979, by a Swedish Supreme Court judge referee, Sara Falk, that some kind of a cutting tool and a piece of tape (clearly visible on the attached photo), A-10, had been used to destroy evidence as to an intervention by the Swedish Chancellor of Justice with the Supreme Court for the purpose of perpetuating a major miscarriage of justice in Petitioner's case?

WHETHER the Immigration Judge denied Petitioner's constitutional***rights by canceling a***hearing as soon as he was informed that Petitioner, at considerable expense to himself and the Swedish Citizens' Committee for the Investigation of the Doings of the Parliamentary Ombudsman for Justice which he has founded and is still heading, had arranged for the travel to San Diego, California of witnesses from New York/Boston and Sweden who, in effect, did arrive but had to go all the way back again without being able to testify in support of Petitioner's claim to recognition of his status of political refugee?

WHETHER the Immigration Judge denied Petitioner his constitutional***rights to substantive and procedural due process and a fair hearing by utilizing, to the detriment of [his] claim to refugee status, evidence which had been introduced by Petitioner on his own behalf—without giving [him] any opportunity to explain the relevance of his own evidence, that is, what he intended to prove by introducing it?

WHETHER the Immigration Judge denied Petitioner his constitutional***rights***by only cursorily reviewing***the bulk of the evidence***largely limiting himself to SIMPLY LISTING CRUCIAL EVIDENCE***?

WHETHER "**[i]t is clear that the qualifying language of the withholding [of deportation] statute is identical to that of the asylum law,**" as the Immigration Judge expressed the reasoning of the **Stevic** and the **Rejaie** court, **Stevic v. Sava,** 678 F.2d 401 (2nd Cir. 1982), respectively, **Rejaie v. INS,** 691 F. 2d 139 (3rd Cir. 1982)—although only in that posterior version of his June 19, 1981 oral decision which was altered for the purpose, **inter alia,** of incorporating the only burden-of-proof issue, namely, the uniform criteria, on which, albeit differing otherwise, the **Stevic** and the **Rejaie** court do agree? A.R. 75.

WHETHER the appropriate standard for testing Petitioner's eligibility for asylum is "well-founded fear of being persecuted"—or the quite evidently much more stringent withholding-of-deportation showing that Petitioner's "life or freedom would be threatened" upon his***return***to Sweden?

WHETHER the Immigration Judge applied the wrong substantive standard when denying Petitioner [refugee status] on the alleged ground that Petitioner had failed to show that his freedom would be threatened upon his return to Sweden, particularly in view of the fact (1) that the true "country of [Petitioner's] habitual residence" is Spain, and not Sweden, and (2) that Petitioner, while a lawful permanent resident of Spain, actually was deprived of his freedom for 36 days, in connection with a reverse **(sic)** extradition attempt, and subsequently, when the roof fell in on the reverse extradition plot,

condemned by the Supreme Prosecutor [presently the Supreme Police Chief of Sweden], in a conspiracy with the Parliamentary Ombudsman for Justice, to remain **de facto** incarcerated within the territorial boundaries of Spain, without being permitted to renew his Swedish passport and openly threatened by the public prosecution authorities in Swedish news media with being jailed in any other country in new extradition proceedings, if he ever would venture to leave his residence and **forum delicti** State of Spain before May 29, 1992, that is, within 30 (thirty) statute-of-limitation years after May 29, 1962, which is the date when Petitioner allegedly committed a criminal offense by signing a license agreement in Madrid for the manufacturing of building cranes in Spain? Exhibit 38, A.R. 434 to 443.

WHETHER the Immigration Judge committed reversible error by avoiding making a finding as to the only criteria he lawfully was supposed to deal with, namely, if Petitioner's "fear of being persecuted***" was subjectively and objectively "well-founded" or not?

WHETHER—given the undisputable fact that Petitioner***met his burden of proving not only "well-founded fear of being persecuted for reasons of***political opinion," namely, that he, effectively, was a refugee within the definition of the 1967 Protocol***, but that he had been and continued to be a victim of persecution***—the Immigration Judge abused his discretionary power by **denying [refugee status] while contending,** although such statement was false as well as irrelevant to the determination of Petitioner's eligibility for asylum, that Petitioner had **failed to prove that his freedom would be threatened upon his***return to Sweden?**

WHETHER the Board of Immigration Appeals committed reversible error by ignoring that the Immigration Judge improperly had applied the life-or-freedom-being-threatened criteria pertaining to the mandatory withholding-of-deportation provision in Article 33.1 of the United Nations 1951 Convention Relating to the Status of Refugees***onto the unmistakably distinct question of Petitioner's discretionary eligibility for asylum as a recognized political refugee

as to whom the persecution criteria, under the applicable provision of the 1967 Protocol, Article I, is the far less demanding one of "well-founded fear of being persecuted?"

WHETHER the Immigration Judge denied Petitioner his constitutional***rights*** by concealing***that the Swedish "law" enforcement authorities used passport renewal threats to force Petitioner to submit to the blatantly unlawful cover-up jurisdiction of the***Swedish courts, unlawful under any imaginable law, in regard to acts which in their entirety had taken place "in Spain" and which, if constituting a crime, because Petitioner continued to remain and reside within what would have been his (a) **forum delicti commissi**, (b) **forum domicilii**, and (c) **forum deprehensionis** if only any crime could have been alleged to have been committed, would have been under the exclusive and absolute jurisdiction of the Spanish courts?